

OPPOSITION EXHIBIT 3 – Deposition of Defendant Stephen Urban

In The Matter Of:

*Eli Mistovich, Jr. v.
Elizabeth Bowden, et al.*

*Stephen Urban, Jr.
Vol. 1, September 14, 2005*

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DIRECT EXAMINATION

BY MR. TEAGUE:

[1] Q: Good morning, Mr. Urban. My name is Frank
 [2] Teague, and I represent Eli Mistovich, the Plaintiff
 [3] in this case. You're accompanied by counsel,
 [4] Attorney Rubin. I'll be asking you some questions.
 [5] Just a couple of ground rules in depositions. I'd
 [6] appreciate it if you'd let me finish the question
 [7] before you start your answer. People tend to try to
 [8] answer before we finish, but the stenographer has to
 [9] take everything down. And if you answer "yes" or
 [10] "no," just say "yes" or "no" rather than nodding
 [11] your head so that the record may reflect your
 [12] answer. And if you want to take a break at any
 [13] time, confer with counsel, just so state. Okay?

[14] Would you state your name for the record.

[15] A: Stephen Urban, Jr.

[16] Q: And what's your home address?

[17] A: 25 Townhouse Road, Attleboro, Mass.

[18] Q: And how old are you?

[19] A: Fifty-two years old.

[20] Q: And are you married?

[21] A: Yes, I am.

[22] Q: Children?

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[1] A: Two.

[2] Q: And are you a high school graduate?

[3] A: Yes, I am.

[4] Q: And any post high school education?

[5] A: Rutgers University.

[6] Q: And did you graduate from Rutgers?

[7] A: No, I didn't.

[8] Q: Okay. Now, are you presently employed by
 [9] the Massachusetts Bay Commuter Railroad Company?

[10] A: Yes, I am.

[11] Q: I'll refer to that as "MBCR."

[12] A: Correct.

[13] Q: Okay. And would you describe for the
 [14] record what is the business of MBCR.

[15] A: We operate the commuter rail service in
 [16] Eastern Massachusetts under contract with the MBTA.

[17] Q: And how long has MBCR operated the commuter
 [18] rail service under the MBTA contract?

[19] A: Since July 1st, 2003.

[20] Q: And is that the only business of MBCR?

[21] A: Yes, it is.

[22] Q: And what's your position at MBCR?

[23] A: Deputy general manager.

[24] Q: And what are the duties of that position?

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[1] A: In that role I serve as the chief operating
 [2] officer. I'm responsible for the day-to-day
 [3] operation with district responsibility for the
 [4] engineering and mechanical departments.

[5] Q: And who's your immediate supervisor?

[6] A: Kevin Lydon.

[7] Q: And what's his position?

[8] A: General manager.

[9] Q: And how long have you worked for MBCR?

[10] A: Since May of 2003.

[11] Q: And MBCR, is that a public-owned company,
 [12] if you know?

[13] A: I'm not quite sure when you say
 [14] "public-owned."

[15] Q: Do you know if MBCR is a corporation?

[16] A: Yes, it is, but it does not have
 [17] public-traded stock, if that's what you mean.

[18] Q: My inquiry is based on the nature of the
 [19] entity, just for the record.

[20] A: It's a limited liability corporation.

[21] Q: Do you know who owns the company?

[22] A: It is owned by three separate corporations:
 [23] Connex North America, which has a 60 percent share;
 [24] Bombardier has a 20 percent share, and Alternative

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[1] Concepts has a 20 percent share.

[2] Q: And how long have you been deputy general
 [3] manager?

[4] A: Since January of 2004.

[5] Q: And what's your position — strike that.

[6] Did you work for MBCR prior to January
 [7] 2004?

[8] A: Yes, I did.

[9] Q: And what was your position before January
 [10] of 2004?

[11] A: I was the assistant manager of
 [12] transportation.

[13] Q: And did you have any other jobs at MBCR
 [14] other than the two that you mentioned?

[15] A: No, sir.

[16] Q: Okay. Now, where did you work immediately
 [17] before you went to work for MBCR?

[18] A: I worked for Amtrak.

[19] Q: Okay. And over approximately what time
 [20] period did you work for Amtrak?

[21] A: Since 1976.

[22] Q: So from '76 to — 1976 to 2003 you worked
 [23] for Amtrak?

[24] A: That is correct.

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[1] Q: And what job — what would you describe or
[2] summarize the jobs that you've held while working
[3] for Amtrak?
[4] A: I was primarily a transportation or
[5] operations officer in various positions in the
[6] Northeast corridor.
[7] Q: Did you work in — well, strike that.
[8] Prior to the time that MBCR started
[9] operating the commuter rail service for the T in
[10] Eastern Massachusetts, did Amtrak operate that
[11] service?
[12] A: Yes, they did.
[13] Q: Okay. And do you recall how long Amtrak
[14] operated it?
[15] A: January 1st, 1987.
[16] Q: And while you worked at Amtrak, did you
[17] have any responsibility with respect to the commuter
[18] rail service?
[19] A: For a six-year period I did.
[20] Q: And what — would you tell me approximately
[21] what years?
[22] A: 1987 to 1993.
[23] Q: And what were your responsibilities?
[24] A: I was the assistant transportation of train

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[1] movement, and my responsibilities included the
[2] operation of both north- and south-side commuter
[3] rail in addition to the Amtrak inner city.
[4] Q: Okay. So from 1993 to 2003 what were your
[5] duties at Amtrak?
[6] A: I spent a year and a half in New Haven as a
[7] district superintendent and then was the general
[8] manager of terminal services at South Hampton Street
[9] Yard.
[10] Q: And where is South Hampton Street Yard?
[11] A: South Boston.
[12] Q: Oh, South Boston. Okay. Now, prior to
[13] going to work at MBCR, were you personally
[14] acquainted with Eli Mistovich?
[15] A: Yes, I was.
[16] Q: And do you recall how long you have known
[17] Mr. Mistovich?
[18] A: I met him soon after I came to New England
[19] in 1987.
[20] Q: And did you have any working relationship
[21] with him at Amtrak?
[22] A: Yes.
[23] Q: And would you describe what that was.
[24] A: Well, in the various roles that I had,

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[1] particularly in the early years in New England, part
[2] of my responsibility was scheduling track work,
[3] track outages, so I would have contact with Mr.
[4] Mistovich because he would be on the track side
[5] scheduling those same outages, and we would
[6] determine the impact to the passenger service.
[7] Q: Do you remember what his position was at
[8] Amtrak?
[9] A: I — well, I don't know specifically what
[10] his title was.
[11] Q: Did you have any supervisory authority over
[12] Mr. Mistovich at Amtrak?
[13] A: No.
[14] Q: Okay. And you recall that the basis of
[15] this case is that Mr. Mistovich was terminated
[16] involuntarily at MBCR on March 30, 2004?
[17] A: Yes.
[18] Q: And do you know how long Mr. Mistovich
[19] worked at MBCR before he was terminated?
[20] A: July 1st, 2003.
[21] Q: And do you recall what his job title was at
[22] MBCR?
[23] A: I think he was assistant division engineer,
[24] Track.

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[1] Q: Okay. And do you know what his
[2] responsibilities were generally?
[3] A: He was responsible for the maintenance of
[4] the track structure.
[5] Q: And do you know if that was a
[6] responsibility he had while he worked at Amtrak?
[7] A: Yes.
[8] Q: Now, during the approximately nine-,
[9] ten-month period that he worked for MBCR, did you
[10] have any interaction with Mr. Mistovich?
[11] A: Yes. MBCR is a small company, so the
[12] managers all interacted at various times.
[13] Q: So if you could just generally describe
[14] what interaction you had with Mr. Mistovich?
[15] A: Well, we would see each other at meetings.
[16] Through the course of normal business we would have
[17] discussions.
[18] Q: Okay. Did you have an understanding of
[19] whether or not Mr. Mistovich had any
[20] responsibilities with respect to interviewing new
[21] employees?
[22] A: Yes, he did.
[23] Q: And would you describe what your
[24] understanding of his responsibility was.

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[1] A: Mr. Mistovich served as the interview
[2] officer for hiring track employees.
[3] Q: And for the record what are track
[4] employees?
[5] A: Those — that class of employees that
[6] install and maintain the track infrastructure.
[7] Q: Were you in a supervisory position to Mr.
[8] Mistovich?
[9] A: As the deputy general manager, I did have
[10] overall responsibility for the Engineering
[11] Department, but there was a layer between Mr.
[12] Mistovich and myself, which would have been the
[13] chief engineer.
[14] Q: And was that Mr. Nevero, Stephen Nevero?
[15] A: Yes.
[16] Q: So Mr. Nevero would be considered Mr.
[17] Mistovich's immediate supervisor?
[18] A: Yes, sir.
[19] Q: Other than his work at Amtrak, did you have
[20] any understanding of Mr. Mistovich's employment
[21] background before he came to work for MBCR?
[22] A: Well, I knew that he had worked in the
[23] Track Department and was a track supervisor.
[24] Q: Do you know how long he had worked for

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[1] Amtrak?
[2] A: Many years but I don't know specifically.
[3] Q: Now, when you said MBCR started operating
[4] the commuter rail service for the MBTA in July of
[5] 2003 —
[6] A: Yes.
[7] Q: — was that pursuant to a bidding process
[8] where a contract was awarded?
[9] A: Yes, it was.
[10] Q: Okay. Now, when — was MBCR organized
[11] specifically to bid on this MBTA contract?
[12] A: Yes, it was.
[13] Q: Once the contract was awarded, how did MBCR
[14] go about finding employees to perform the services
[15] that were necessary?
[16] A: As part of the operating agreement with the
[17] MBTA, MBCR was required to take all the existing
[18] Amtrak commuter rail employees that were employed as
[19] of I believe it was March 2002. If you were an
[20] active employee on that date, you were guaranteed
[21] employment with MBCR, and that included both union
[22] employees as well as salaried employees up to a
[23] certain level.
[24] Q: Okay. Approximately how many employees

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[1] does MBCR have at the present time, if you know?
[2] A: About 1,760.
[3] Q: And has that — is that an increase —
[4] well, strike that.
[5] Back in 2003 when — after the contract was
[6] awarded and MBCR first started operating, do you
[7] know how many employees they started with?
[8] A: It was over 1,600, and subsequently we've
[9] hired more than 100 new employees.
[10] Q: Okay. So if my understanding is correct,
[11] pursuant to that agreement MBCR took on all the
[12] Amtrak employees?
[13] A: Yes.
[14] Q: Do you know if there was any reviewing
[15] process by MBCR going over each employee's records?
[16] A: Not to the extent that an MBCR-hired
[17] employee is subjected to today. We took over the
[18] workforce virtually intact.
[19] Q: Okay. So there was no individual review of
[20] each employee, I take it?
[21] A: No, that is a correct statement.
[22] Q: Did MBCR have access to the employee's
[23] personnel files at Amtrak?
[24] A: The only information that was conveyed from

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[1] Amtrak was original date of hire, the basic
[2] personnel information such as age and current
[3] address, dependent status. The discipline records
[4] that were accrued under Amtrak did not come over
[5] unless it involved anything that was federally
[6] mandated under the Federal Railroad Administration
[7] or incidents involving drugs and alcohol.
[8] Q: Were any background checks done on the
[9] individual employees; do you know?
[10] A: Not those that came over.
[11] Q: Okay. Did the — how about the salary and
[12] the benefits of employees, did they change at all in
[13] that transition?
[14] A: Yes, they did.
[15] Q: And how did they change?
[16] A: For the unionized employees there was a
[17] five-year negotiated labor agreement, and for the
[18] salaried employees they all received a five percent
[19] across-the-board wage increase.
[20] Q: Was Mr. Mistovich as — I believe you said
[21] his title was assistant track engineer?
[22] A: Well, I said I wasn't sure, but I believed
[23] it was assistant division engineer, Track.
[24] Q: Was he considered management?

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[1] Q: Okay. And the other people at the meeting
[2] were Elizabeth Bowden and Stephen Nevero from MBCR
[3] besides Mr. Mistovich, correct?
[4] A: That is correct.
[5] Q: And do you know how they came to be present
[6] at the meeting?
[7] A: Well, Liz Bowden was the head of HR and
[8] Steve Nevero was the chief engineer. So you had the
[9] department head as well as the head of HR there.
[10] Q: Did you have any conversations with
[11] Elizabeth Bowden prior to the meeting about the
[12] subject matter of the meeting?
[13] A: Only that there was an allegation of an
[14] infraction of our hiring practices, our hiring
[15] policies.
[16] Q: Okay. You did have a conversation with
[17] her?
[18] A: (Nods head)
[19] Q: You have to say "yes."
[20] A: Yes.
[21] Q: Was this by telephone or face to face?
[22] A: This was when I was meeting with the
[23] general manager, Steve Nevero and Liz Bowden prior
[24] to the 26th when this meeting was going to be

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[1] initial meeting between you and Kevin Lydon where
[2] Mr. Mistovich was not present.
[3] A: At that meeting that's where the allegation
[4] was presented.
[5] Q: Do you remember about when that meeting
[6] occurred?
[7] A: Not more than a day or two before the March
[8] 26th meeting.
[9] Q: Were you shown any documents at this
[10] meeting with Mr. Lydon?
[11] A: No.
[12] Q: And prior to the March 26th meeting, were
[13] you shown any documents?
[14] A: No.
[15] Q: And prior to the March 26th meeting, did
[16] you talk to Mr. Mistovich about the purpose of the
[17] meeting?
[18] A: No.
[19] Q: Do you know if Ms. Bowden talked to Mr.
[20] Mistovich or provided any information to him about
[21] the reason for the meeting?
[22] A: I have no knowledge of that.
[23] Q: Okay. How about Mr. Nevero?
[24] A: Again, I don't know if he did or he didn't.

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[1] scheduled.
[2] Q: So there was a meeting with Mr. Lydon
[3] attended by you, Ms. Bowden and Mr. Nevero?
[4] A: Correct.
[5] Q: And he assigned you to conduct this
[6] investigation; is that —
[7] A: To be a party to the investigation.
[8] Q: Do you recall any conversation at the
[9] meeting?
[10] A: Other than it was that we were — it was
[11] alleged that prospective candidates were being
[12] excluded from the hiring pool based on where they
[13] lived, and that's what we were to determine, if
[14] there was any truth to that allegation.
[15] Q: Do you remember who made that allegation?
[16] A: The allegation was attributed to Ms.
[17] Leaton.
[18] Q: And did you receive any information as to
[19] what the basis of the allegation was?
[20] MS. RUBIN: Objection. You mean prior to
[21] the meeting with —
[22] MR. TEAGUE: Yes.
[23] A: No.
[24] Q: And "at the meeting," I'm talking about the

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[1] Q: Did you talk to Alison Leaton before the
[2] meeting?
[3] A: No.
[4] Q: Do you recall in your meeting with Mr.
[5] Lydon anyone suggesting that Mr. Mistovich be
[6] informed of the allegations prior to the meeting on
[7] March 26th?
[8] A: I don't remember if that was discussed.
[9] Q: Before this initial meeting with Mr. Lydon
[10] and Mr. Nevero and Ms. Bowden, were you aware of any
[11] criticism of MBCR from government officials for
[12] failure to hire minorities?
[13] A: Not prior to this meeting, no.
[14] Q: Now, where did the meeting take place?
[15] MS. RUBIN: Which meeting?
[16] Q: I'm sorry. Let me go back —
[17] MR. TEAGUE: You're correct.
[18] Q: — let me direct your attention to the
[19] March 26th meeting. This is the one that Mr.
[20] Mistovich was present. Where did it take place?
[21] A: 32 Cobble Hill Road, Somerville.
[22] Q: Is that the MBCR main office?
[23] A: That's an engineering office.
[24] Q: And what time of the day did the meeting

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[1] A: The questions continued by Ms. Bowden, and
[2] Mr. Mistovich then only answered in one way, and
[3] that was "I try to hire the best, most qualified
[4] employee" virtually to every question until such a
[5] point where he stopped answering questions
[6] altogether; and Ms. Bowden made a statement to the
[7] effect of, you know, "By not answering we can only
[8] assume that this is true." There was no response to
[9] that. Ms. Bowden also said that Mr. Mistovich was
[10] stonewalling, in which Mr. Mistovich replied in
[11] referencing some benefits issues that he had with
[12] the HR Department. But it was clear to me that his
[13] initial response was in a moment of candor. In
[14] realizing what he had said, he then went to this, "I
[15] only hire the best and most qualified."
[16] Q: Did Mr. Mistovich ever say that he did not
[17] hire people because they were minorities?
[18] MS. RUBIN: Objection.
[19] Q: You may answer the question.
[20] MS. RUBIN: Right. I'm not telling you not
[21] to answer.
[22] THE WITNESS: Oh.
[23] A: No, he never said that.
[24] Q: Okay. Before or at the meeting, did anyone

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[1] involved in selecting resumes of candidates to be
[2] interviewed?
[3] A: Yes.
[4] Q: And do you know how many resumes Mr.
[5] Mistovich and Ms. Leaton reviewed?
[6] A: No, I don't.
[7] Q: Do you know how many candidates they
[8] interviewed for the job?
[9] A: No, I don't.
[10] Q: Do you know if — well, let me go back a
[11] step. Let me show you a document that was produced
[12] by your counsel in this proceeding. It's —
[13] MR. TEAGUE: I only have one extra copy.
[14] It's Bates stamped No. 1.
[15] Q: It appears to be e-mails between Elizabeth
[16] Bowden and Alison Leaton, and I ask you if you've
[17] seen this before.
[18] A: (Reviewing document) I have not seen this
[19] before.
[20] Q: Okay. Calling your attention to the —
[21] there's an e-mail, the top e-mail, from Alison
[22] Leaton to Liz Bowden dated Thursday, March 11, 2004,
[23] and that refers to a conversation that — in the
[24] first paragraph — Ms. Leaton had with Eli, which is

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[1] make any inquiry into Mr. Mistovich's health?
[2] A: No.
[3] Q: Was any inquiry made as to whether he was
[4] taking any medication which might affect his mental
[5] condition?
[6] A: No.
[7] Q: Now, at the meeting — this was on March
[8] 26th, correct?
[9] A: Yes.
[10] Q: And the incident that arose if I understand
[11] correctly was an allegation that Ms. Leaton made
[12] that during the selection process Mr. Mistovich had
[13] indicated reluctance to hire people from these
[14] areas, referring to Mr. Morgan?
[15] A: Yes.
[16] Q: Do you know when the incident between Ms.
[17] Leaton and Mr. Mistovich occurred?
[18] A: No, I don't.
[19] Q: Do you know how long before March 26th it
[20] occurred?
[21] A: No, I don't know.
[22] Q: Do you know in that hiring process — well,
[23] let me go back a second. Was it your understanding
[24] that it was Ms. Leaton and Mr. Mistovich that were

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[1] referred to as "late last week."
[2] A: Okay.
[3] Q: I assume would put it around March 4th or
[4] March 5th, the conversation.
[5] MS. RUBIN: Objection. You're asking him
[6] whether — he doesn't know.
[7] MR. TEAGUE: I haven't asked him a
[8] question. If you'll allow me ask my question —
[9] MS. RUBIN: Okay. Your voice went up, so
[10] it sounded like you were asking a question.
[11] MR. TEAGUE: I haven't asked it yet; so if
[12] you'll allow me to do that.
[13] Q: Looking at that does that refresh your
[14] recollection or understanding in any way of how long
[15] before the March 26th meeting the incident with Ms.
[16] Leaton and Mr. Mistovich occurred?
[17] A: The only knowledge I have is that it
[18] happened a few weeks prior. That's all.
[19] Q: So you knew it was maybe two or three weeks
[20] prior?
[21] A: It's very possible.
[22] MS. RUBIN: Objection. Do you know? You
[23] answered "it's possible."
[24] A: I have no direct knowledge of when the

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[1] resignation was the prudent course of action.
[2] Q: Do you recall at the meeting whether or not
[3] Mr. Lydon mentioned that he had known or worked with
[4] Mr. Mistovich at Amtrak?
[5] A: He didn't specifically mention that.
[6] Q: Do you recall whether or not Mr. Lydon ever
[7] mentioned that he had actually signed a performance
[8] evaluation at Amtrak where Mr. Mistovich was
[9] actually commended for his valuing diversity in the
[10] hiring process?
[11] A: Mr. Lydon never mentioned that.
[12] Q: I'm going to show you a document that's
[13] entitled "Amtrak Job Performance." These have been
[14] produced for your counsel. I know you haven't seen
[15] the document before. I'm going to ask you to turn
[16] your attention to the last page.
[17] A: (Witness complies)
[18] Q: Do you recognize the signature where it
[19] says "secondary reviewer"?
[20] A: I do.
[21] Q: And that's Mr. Lydon's signature?
[22] A: It is.
[23] Q: And just on the first page there is a —
[24] there's some comments on valuing diversity, which

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[1] was made, was there another meeting at which Mr.
[2] Mistovich was informed of the decision?
[3] A: The date of termination.
[4] Q: That was March 30th, 2004?
[5] A: Yes.
[6] Q: And was that meeting at the same place, the
[7] Cobble Hill facility?
[8] A: Yes, it was.
[9] Q: And I'm going to show you a document.
[10] MR. TEAGUE: It's the only one I have.
[11] It's the termination.
[12] Q: It's a letter dated March 30, 2004. Have
[13] you seen that document before?
[14] A: Yes, I have.
[15] Q: And was that — that's a letter to Mr.
[16] Mistovich signed by Stephen Nevero, correct?
[17] A: That is correct.
[18] Q: And that was — was that letter handed to
[19] him at the meeting?
[20] A: Yes, it was.
[21] MR. TEAGUE: Why don't we mark the
[22] termination letter as Exhibit 4.
[23] (Document marked as Urban
[24] Exhibit 4 for identification)

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[1] you have not seen before. You recall Mr. Lydon
[2] saying nothing about Mr. Eli's hiring practices at
[3] Amtrak, I take it?
[4] A: He made no mention of it.
[5] Q: Did anyone discuss Mr. Mistovich's hiring
[6] record at Amtrak before he came to MBCR?
[7] A: No.
[8] MR. TEAGUE: Why don't I mark just for the
[9] record this Amtrak Job Performance Form, which is
[10] for the time period 10/1/99 to 9/30/2000, for the
[11] next exhibit, 3, for identification.
[12] (Document marked as Urban
[13] Exhibit 3 for identification)
[14] Q: Did Ms. Bowden, if you know, work at Amtrak
[15] before she came to work at MBCR?
[16] A: She did not.
[17] Q: Do you know where she worked before MBCR?
[18] A: No, I don't.
[19] Q: During the time that you knew Mr. Mistovich
[20] at Amtrak, had you ever received any information
[21] that he had discriminated in any form against any
[22] minority?
[23] A: I never had that knowledge, no.
[24] Q: Now, after this meeting where the decision

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[1] Q: And you and Ms. Lydon (sic) and Mr. Nevero
[2] were present, correct, at this March 30th meeting?
[3] MS. RUBIN: I think you've got the names
[4] confused. Try that again.
[5] Q: Let me try it again. At the March 30th
[6] meeting, you and Liz Bowden and Mr. Nevero were
[7] present?
[8] A: That's correct.
[9] Q: And Mr. Mistovich was summoned or called
[10] in?
[11] A: Yes, he was.
[12] Q: And tell us what you remember, the
[13] substance of the conversation at that meeting.
[14] A: Mr. Nevero took the lead and said that
[15] based on the previous meeting it was determined that
[16] Mr. Mistovich was not in compliance with the hiring
[17] policies of MBCR and that he could resign or he
[18] would have to be terminated. He was given that
[19] option. Mr. Mistovich requested a little time to
[20] think about it, and it was stated there was no — it
[21] had to happen now. He then opted to be terminated.
[22] Q: Do you recall any other comments that he
[23] said?
[24] A: He thought it was unfair.

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[1] A: Yes.
[2] Q: Did you consider that to be a strange
[3] subject for someone of Mr. Mistovich's background to
[4] make?
[5] MS. RUBIN: Objection.
[6] A: I actually thought it was strange to be
[7] made in this day and age particularly given that the
[8] history of railroad hiring and the amount of
[9] training that we had gone through. If I may?
[10] Q: Sure.
[11] A: Amtrak as well as the MBTA had been under
[12] years of pressure because of discriminatory hiring
[13] practices. Amtrak was served with a class action
[14] suit by minority candidates particularly in the
[15] Track Department because they were excluded from
[16] positions. The training that we went through as
[17] Amtrak officers was very intensive and fairly
[18] regular into how we were supposed to behave in
[19] compliance with the federal law about hiring.
[20] So to answer your question, given the
[21] training that we had had, it was. That anyone in
[22] this day and age would even think in those terms is
[23] strange.
[24] Q: And at Amtrak did you have any hiring

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[1] responsibilities?
[2] A: Yes, I did.
[3] Q: And, in fact, do you receive performance
[4] evaluations —
[5] A: Yes, I did.
[6] Q: — working at Amtrak, did you not?
[7] A: Yes.
[8] Q: In your performance evaluation was your
[9] diversity in hiring one of the categories in which
[10] you were evaluated?
[11] A: Yes, absolutely. Every manager had that.
[12] Q: So that was a very important subject at
[13] Amtrak?
[14] A: Yes, it was.
[15] Q: So would it be reasonable to infer that Mr.
[16] Mistovich had the same experience at Amtrak that you
[17] had?
[18] A: Yes.
[19] MS. RUBIN: Objection.
[20] THE WITNESS: Oh, sorry.
[21] Q: Did you say anything to Mr. Mistovich about
[22] how you felt it was strange that he would make this
[23] comment?
[24] A: No.

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[1] MR. TEAGUE: Let me just take a moment to
[2] confer with Mr. Mistovich. I'll be back.
[3] MS. RUBIN: Okay.
[4] (Brief recess)
[5] MR. TEAGUE: I just have a few more
[6] questions, so if you just want to go ahead, I'll be
[7] finished in a couple of minutes.
[8] MS. RUBIN: Okay. Great.
[9] BY MR. TEAGUE:
[10] Q: Let me go back to a couple of points we
[11] discussed earlier, Mr. Urban. If any — you did
[12] mention early on there were some discussions after
[13] the death of an employee as to — in the snowstorm?
[14] A: Yes.
[15] Q: Do you recall having any discussions or
[16] hearing Mr. Lydon make any remarks to the effect
[17] that he took exception to anything Mr. Mistovich
[18] said in connection with that incident?
[19] A: I don't recall anything like that.
[20] Q: Now, between the July of '03 and the
[21] present, I believe you testified that MBCR has hired
[22] well over 100 new employees, correct?
[23] A: Yes.
[24] Q: Have you had any complaints from any

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[1] government agency about failing to hire a sufficient
[2] number of minorities?
[3] A: There is an ongoing issue with Councilman
[4] Turner.
[5] Q: Is that a Boston City Councilor?
[6] A: Boston City Councilor.
[7] Q: Would you describe what that issue is.
[8] A: Well, he thinks we should turn around our
[9] entire workforce. It is a political issue with him,
[10] it has been since the Amtrak days, and how it
[11] relates to the MBTA hiring. That's an ongoing issue
[12] with Councilman Turner. We have not been cited by
[13] any federal agencies. There have been no — if
[14] that's what you mean?
[15] Q: Yes.
[16] A: No.
[17] Q: How about the Massachusetts Commission
[18] Against Discrimination?
[19] A: There are employees that bring cases before
[20] MBCR at the MCAD, yes, there is.
[21] Q: Have any cases been brought for
[22] discrimination in hiring as opposed to termination?
[23] A: I don't know specifically.
[24] Q: Okay. Do you know about how many cases

OPPOSITION EXHIBIT 4 – Deposition of Defendant Stephen Neverro

In The Matter Of:

*Eli Mistovich, Jr. v.
Elizabeth Bowden, et al.*

*Stephen Nevero
Vol. 1, September 15, 2005*

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[1] to allow me to finish my question before you start
[2] your answer for the stenographer; and if you —
[3] rather, if you would say "yes" or "no" rather than
[4] nod your head or say "uh-huh" or some of the other
[5] ways that we converse, just so the record will show
[6] your answer. And if you want to take a break or
[7] talk to your counsel, you can so indicate at any
[8] time; and if you don't understand my question, I'd
[9] be happy to rephrase it. Okay?

[10] A: Okay.

[11] Q: Would you state your name for the record.

[12] A: Stephen Nevero.

[13] Q: And for the record what's your home
[14] address?

[15] A: 35 Callahan Street, Billerica, Mass.

[16] Q: And how old are you?

[17] A: Fifty-seven.

[18] Q: Are you married?

[19] A: No.

[20] Q: Would you describe — well, are you a high
[21] school graduate?

[22] A: Yes.

[23] Q: Any education after high school?

[24] A: Yes.

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[1] A: Since around 2000, I don't remember the
[2] exact date.

[3] Q: Sometime in 2000?

[4] A: Yes, I think. I'm not sure of the exact
[5] date.

[6] Q: Okay. Are they one of the principals or
[7] owners of the Massachusetts Commuter Railway
[8] Company?

[9] A: No.

[10] Q: At some point were you employed by
[11] Massachusetts Bay Commuter Rail Company?

[12] A: No.

[13] Q: You've never been employed by them?

[14] A: No.

[15] Q: Okay.

[16] MS. RUBIN: Can we go off the record for a
[17] minute?

[18] MR. TEAGUE: Yes.

[19] (Discussion off the record)

[20] Q: After a discussion with your counsel, is my
[21] understanding correct that you work with the
[22] Massachusetts Bay Commuter Railway Company as a
[23] consultant?

[24] A: Yes.

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[1] Q: Would you describe that education.

[2] A: Civil BS in civil engineering from
[3] Northeastern University.

[4] Q: And when did you receive your BS?

[5] A: 1971.

[6] Q: And any other degrees?

[7] A: No.

[8] Q: Okay. Are you presently employed?

[9] A: Yes.

[10] Q: And are you employed by the Massachusetts
[11] Bay Commuter Railway?

[12] A: No.

[13] Q: And who are you employed by at the present
[14] time?

[15] A: HNTB Corporation.

[16] Q: And what is the business of that entity?

[17] A: They're a consulting firm.

[18] Q: Where are they located?

[19] A: My home office is located in Burlington,
[20] Mass.

[21] Q: And what consulting corporation — do they
[22] have a particular field of expertise?

[23] A: Mostly engineering.

[24] Q: And how long have you worked for HNTB?

[1] Q: And is that pursuant to some agreement or
[2] an agreement between HNTB and what I'll call "MBCR"?

[3] A: Yes.

[4] Q: And how long have you worked as a
[5] consultant with MBCR?

[6] A: Since July 2003.

[7] Q: Okay. And are you still working as a
[8] consultant with MBCR?

[9] A: Yes.

[10] Q: Okay. Do you have an official title or
[11] position with MBCR?

[12] A: Yes.

[13] Q: What is that?

[14] A: Chief engineer.

[15] Q: And what are your duties as chief engineer?

[16] A: My duties are to direct and oversee the
[17] maintenance and construction of the tracks, bridges,
[18] buildings, signal system.

[19] Q: Are there other consultants from HNTB that
[20] work with MassBay Commuter Railroad besides you?

[21] A: Not that I'm aware of, full time.

[22] Q: Before you came to MassBay Commuter
[23] Railroad, what job did you do for HNTB?

[24] A: I had various jobs. I was project manager

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[1] of the Lawrence Station Development project, project
[2] manager of the Fore River Yard Rehabilitation. I
[3] was involved in the extension or the proposed
[4] extension of the commuter rail to Nashua, New
[5] Hampshire.
[6] Q: And on these jobs were you a consultant?
[7] A: Yes.
[8] Q: Okay. What was your — well, maybe you can
[9] summarize your employment history before you went to
[10] work with H — what is it? HNTB?
[11] A: Yes.
[12] Q: — before you went to work with HNTB around
[13] 2000.
[14] A: Prior to HNTB I worked for the Guilford
[15] Rail System. I was an employee of the Boston and
[16] Maine Corporation. Guilford Rail purchased the
[17] Boston to Maine railroad.
[18] Q: So — did you work in the railroad industry
[19] before the B&M Corporation?
[20] A: Before the B&M, no.
[21] Q: When did you start working for B&M?
[22] A: 1967.
[23] Q: Okay. And what was your positions at B&M?
[24] A: Student surveyor.

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[1] Q: And did you hold other positions at B&M?
[2] A: Yes.
[3] Q: And what were they?
[4] A: Resident engineer; construction supervisor;
[5] track supervisor; commuter rail improvement project
[6] manager; chief engineer, commuter rail;
[7] vice-president, engineering.
[8] Q: And when did Guilford take over B&M?
[9] A: I don't remember the exact date.
[10] Q: Those jobs that you described, were they
[11] for B&M and Guilford?
[12] A: Some were for B&M, and some were for
[13] Guilford.
[14] Q: And when did you leave Guilford?
[15] A: When I went to HNTB.
[16] Q: Okay. The positions on the commuter rail
[17] that you described, was — what commuter rail system
[18] are you referring to?
[19] A: The MBTA commuter rail system.
[20] Q: Did Guilford have an operating agreement
[21] with MBTA for the commuter rail?
[22] A: They did, yes.
[23] Q: And do you recall when that agreement was
[24] in effect?

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[1] A: Prior to January 1987.
[2] Q: And did the Amtrak then take over
[3] Guilford's function?
[4] A: Yes.
[5] Q: And after January of '87, did you have any
[6] job responsibilities on the commuter rail system for
[7] the MBTA?
[8] A: No.
[9] Q: What did you do for Guilford during that
[10] time period?
[11] A: At that time period, I was vice-president
[12] of engineering.
[13] Q: Oh, okay. So they were in railroad
[14] operations other than the Massachusetts Commuter
[15] Rail System, I take it?
[16] A: Yes.
[17] Q: Was that a nationwide system or —
[18] A: Regional.
[19] Q: — regional. What region of the country?
[20] A: It covered eastern Pennsylvania, State of
[21] New York, Connecticut, Massachusetts, Vermont, New
[22] Hampshire, Maine, and New Brunswick, Canada.
[23] Q: When you worked for Guilford, where were
[24] your office — or where was your principal job

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[1] location, I should say?
[2] A: North Billerica, Mass.
[3] Q: So have you lived in the Boston area during
[4] all that time that you described?
[5] A: No, I did not.
[6] Q: Okay. Were there times where you were out
[7] of the New England region or out of the Boston area?
[8] A: Yes.
[9] Q: Okay. Before you had any duties with MBCR,
[10] did you know Eli Mistovich, the Plaintiff, in this
[11] case?
[12] A: I met Eli, yes.
[13] Q: And do you recall when you first met him?
[14] A: I do not recall the exact time I met him,
[15] no.
[16] Q: How did you come to meet Mr. Mistovich?
[17] A: I don't remember the details.
[18] Q: Did you ever have any work assignments with
[19] him?
[20] A: Not that I'm aware of.
[21] Q: Was your acquaintance with him through your
[22] job?
[23] A: Yes.
[24] Q: Okay. And do you know for whom he worked?

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[1] A: My understanding was that he worked for
[2] Amtrak.
[3] Q: Okay. Did you — prior to, let's say, July
[4] of 2003 when he came to work for MBCR, did you see
[5] him on more than one occasion?
[6] A: I saw him more than once, yes.
[7] Q: Did you have conversations with him from
[8] time to time?
[9] A: Yes.
[10] Q: Okay. And were they — did they involve
[11] professional matters?
[12] A: To the best of my knowledge, they all did,
[13] yes.
[14] Q: You didn't have any personal acquaintance,
[15] personal relationship —
[16] A: No, I didn't.
[17] Q: — with Mr. Mistovich?
[18] MS. RUBIN: I just want to interrupt for a
[19] second. You need to slow down again, because you're
[20] sort of answering before he finishes the question.
[21] So just slow down.
[22] Q: Very common, almost every deposition that
[23] happens. That's the way people talk; but,
[24] unfortunately, we have to have this as a structured

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[1] question and answer.
[2] A: Okay.
[3] Q: Okay. Now, you recall that Mr. Mistovich
[4] was terminated from his employment at MBCR on March
[5] 30, 2004?
[6] A: I recall that he was terminated. I don't
[7] remember the exact date.
[8] Q: Okay. And did — is it your understanding
[9] that Mr. Mistovich worked for MBCR starting around
[10] July of 2003?
[11] A: Yes.
[12] Q: Okay. Were you his immediate supervisor?
[13] A: Yes.
[14] Q: And who did you report to while you worked
[15] at MBCR?
[16] A: I reported to Steve Urban.
[17] Q: Okay. Do you recall what Mr. Mistovich's
[18] job title was at MBCR?
[19] A: I believe it was assistant chief engineer,
[20] Track.
[21] Q: Did you have other assistant chief
[22] engineers besides Mr. Mistovich working —
[23] A: Yes.
[24] Q: — under you? And how many?

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[1] A: About five or six.
[2] Q: And how many assistant chief engineers
[3] Track. Do you remember what his job
[4] responsibilities were in that position?
[5] A: Yes. He directed and oversaw the
[6] maintenance activities of the Track Department, for
[7] the track work.
[8] Q: And do you recall if he had employees that
[9] worked under him in the Track Department?
[10] A: Yes, he did.
[11] Q: And do you remember how many?
[12] A: I don't remember exactly how many, no.
[13] Q: Now, is it called the Track Department or
[14] Division?
[15] A: Yes, Track Department.
[16] Q: How many other departments were there under
[17] you? You said you had five other chief engineers.
[18] A: The same amount, five or six.
[19] Q: Okay. Do you remember — how would you
[20] identify the other departments?
[21] A: Communication and Signals, Force Account,
[22] Bridges and Buildings, Facilities, Administrative,
[23] and Track.
[24] Q: Okay. What's involved in Force Account?

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[1] A: It's — Force Account is a department set
[2] up under Engineering where they manage the extra
[3] work not under the agreement services as requested
[4] by the MBTA.
[5] Q: Do you know how many total employees are in
[6] those six departments that are under you?
[7] A: I don't remember the exact number.
[8] Q: Do you have an approximation?
[9] A: Yes.
[10] Q: How many would that be?
[11] A: Five hundred.
[12] Q: Okay. Did Mr. Mistovich have hiring
[13] responsibility for the Track Department?
[14] A: Yes.
[15] Q: And did each of the other engineers also
[16] have hiring responsibilities for the departments?
[17] A: For their respective departments, yes.
[18] Q: Did you as chief engineer get involved in
[19] the hiring decisions?
[20] A: I did not.
[21] Q: Now, is it your understanding that when
[22] MBCR started operating the commuter rail system for
[23] the MBTA July of 2003 that they employed many
[24] employees from Amtrak that worked in the commuter

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[1] Q: Okay. Did you recall ever meeting with Liz
[2] Bowden and someone else concerning these Track
[3] interviews? The only reason I'm asking you is the
[4] word "Steve" there. It could very well be you or
[5] Mr. Urban or someone else.
[6] A: Can you repeat that question?
[7] Q: If you look along the top line, the names
[8] are "Liz/Beth/Steve," and my question is, the name
[9] "Steve," does that refresh your recollection as to
[10] any meeting you may have had with Liz Bowden or a
[11] person named "Beth" concerning Mr. Mistovich's
[12] participation in these Track interviews?
[13] A: It does not refresh my memory about a
[14] meeting.
[15] MR. TEAGUE: Why don't we mark this Bates
[16] stamped Document No. 4 as Nevero Exhibit 6 for
[17] identification.
[18] (Document marked as Nevero
[19] Exhibit 6 for identification)
[20] Q: Now, you — earlier you used the word
[21] "investigation" in the discussion about your
[22] conversation with Ms. Bowden. Was it your
[23] understanding that there was an investigation being
[24] conducted of Mr. Mistovich's activities in this

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[1] regard?
[2] A: That was my understanding.
[3] Q: Okay. Can you recall how long before the
[4] first meeting with Mr. Mistovich you became aware
[5] that this investigation was taking place?
[6] A: I cannot recall.
[7] Q: You remember if it was more than a week?
[8] A: I do not remember.
[9] Q: Okay. Did you talk to Mr. Mistovich prior
[10] to this first meeting about the subject matter of
[11] the meeting?
[12] A: I do not believe that I did.
[13] Q: Were you instructed or advised by Ms.
[14] Bowden or Mr. Urban not to discuss this matter with
[15] Mr. Mistovich before the meeting?
[16] A: I was advised not to discuss this matter
[17] with Eli Mistovich, but I don't remember by whom.
[18] Q: Besides Liz Bowden and Mr. Urban, was there
[19] anyone else that you recall being involved in this
[20] investigation prior to the first meeting?
[21] A: I don't recall anybody else being involved.
[22] Q: Did the person that instructed you not to
[23] talk to Mr. Mistovich about the purpose of the
[24] meeting prior to the meeting, did that person

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[1] indicate why they were giving you that instruction?
[2] A: I don't recall if there was — I don't
[3] recall the reason.
[4] Q: Did you have an understanding of the
[5] reason?
[6] A: Not that I recall.
[7] Q: Do you know if anyone else provided any
[8] information to Mr. Mistovich about the reason for
[9] the meeting prior to the first meeting?
[10] A: I do not recall.
[11] Q: Okay. Did you ever talk to Alison Leaton
[12] about the allegation prior to the first meeting?
[13] A: I do not recall.
[14] Q: And prior to this initial meeting with Mr.
[15] Mistovich, were you aware of any criticism of the
[16] MBCR by any city, Boston city, or Massachusetts
[17] state officials about a failure to hire minorities?
[18] A: Can you repeat that again.
[19] Q: Yes. Before this incident or before the
[20] termination of Mr. Mistovich, were you personally
[21] aware of any criticism of MBCR for failure to hire a
[22] sufficient number of minorities by Boston or state
[23] government officials?
[24] A: Not that I'm aware of.

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[1] Q: Okay. And do you recall how Mr. Mistovich
[2] came to be present at that initial meeting?
[3] A: I believe I asked him to attend a meeting.
[4] Q: And was this in writing or did you just —
[5] A: I do not recall.
[6] Q: And how much advance notice was he given?
[7] A: I do not recall.
[8] Q: Okay. What do you recall — well, let me
[9] strike that. Let me go back a step.
[10] Your counsel has produced a document
[11] stamped No. 66 today, and can you tell us what that
[12] is.
[13] A: (Reviewing document) Those were notes that
[14] I made.
[15] Q: And those were notes of the first meeting?
[16] A: Yes.
[17] Q: And maybe you can look at — the first line
[18] says "Notes by S. Nevero of interview of Eli
[19] Mistovich on 3/26/04"?
[20] A: Yes.
[21] Q: Is it fair to say that's when the meeting
[22] occurred, March 26th of 2004?
[23] A: I believe so.
[24] Q: And what do you recall, and you can refresh

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[1] Q: In other words, Mr. Mistovich had made some
[2] remarks to Ms. Leaton at some point in the hiring
[3] process that triggered this investigation, correct?

[4] A: He did something that triggered it.

[5] Q: And it was basically statements he made to
[6] Ms. Leaton or at least that Ms. Leaton alleged that
[7] he made?

[8] A: Ms. Leaton — my understanding was that Ms.
[9] Leaton accused that Eli was screening out
[10] applications.

[11] Q: Understood, but that accusation, was it
[12] your understanding, was based on a conversation
[13] between Ms. Leaton and Eli in the hiring process?

[14] A: I don't know where — I don't know whether
[15] it was based on a conversation or not.

[16] Q: Okay. Do you know how long before March
[17] 26th the incidents that concerned Ms. Leaton had
[18] occurred?

[19] A: I do not know.

[20] Q: Okay. Now, in your last bullet point, you
[21] recalled when you made the memo that when asked by
[22] Elizabeth Bowden a second time if he told Alison
[23] Leaton, and then you quote a remark, quote, He had
[24] trouble with them. You see the quotations?

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[1] A: Uh-huh.

[2] Q: Those quotations refer to a statement that
[3] Mr. Mistovich had allegedly made to Ms. Leaton,
[4] correct?

[5] A: Correct.

[6] Q: Okay. Do you know or do you recall having
[7] any understanding or information as to when that
[8] conversation between Ms. Leaton and Mr. Mistovich
[9] had occurred?

[10] A: I do not.

[11] MR. TEAGUE: Why don't we mark the document
[12] Bates No. 66, Mr. Nevero's notes, as the next
[13] exhibit, which I believe would be 7.

[14] (Document marked as Nevero
[15] Exhibit 7 for identification)

[16] Q: Do you recall the name of a particular
[17] candidate who was the subject of this investigation
[18] that was allegedly being screened?

[19] A: I don't recall that, no.

[20] Q: I'm going — if I suggest the name Marvin
[21] Morgan, would that refresh your recollection?

[22] A: I vaguely remember that name.

[23] Q: I'm going to show you what we marked as
[24] Exhibit 2 in the Urban deposition yesterday.

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[1] A: (Reviewing document)

[2] Q: And I'm going to ask you to take a look at
[3] that, and could you tell me if there is anything in
[4] that resume that would suggest to you what Mr.
[5] Morgan's race is?

[6] A: (Reviewing document) I do not see anything
[7] that suggests that.

[8] Q: Have you ever looked at Mr. Morgan's resume
[9] before?

[10] A: I don't believe that I have.

[11] Q: Mr. Morgan was, in fact, hired by MBCR; is
[12] that correct?

[13] A: I believe that he was.

[14] Q: And Mr. — do you know whether or not Mr.
[15] Mistovich participated in the interview of Mr.
[16] Morgan?

[17] A: I believe that he did.

[18] Q: And do you know whether he recommended the
[19] hiring of Mr. Morgan after the interview?

[20] A: I don't know specifically but I would — I
[21] don't know specifically that he did.

[22] Q: Do you know Mr. Morgan personally?

[23] A: No.

[24] Q: Do you have any information as to how he

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[1] has performed as a track employee in the Engineering
[2] Department?

[3] A: I do not.

[4] Q: Do you know whether or not he's ever used
[5] his CDL license, his commercial driver's license?

[6] A: I do not.

[7] Q: Do you know what position Mr. Morgan was
[8] assigned to when he first came to work in the Track
[9] Division?

[10] A: I do not.

[11] Q: Are there levels of, range of trackmen? In
[12] other words, is there an entry-level trackman? For
[13] instance, a carpenter, it may be a journeyman or an
[14] apprentice. Do the trackmen operate like that?

[15] A: I believe there is only one trackman
[16] position.

[17] Q: You're either a trackman or you're not?

[18] A: Right.

[19] Q: Prior to the meeting on March 26th, were
[20] you aware of any criticism from any source of Mr. —
[21] directed towards Mr. Mistovich for failing to hire
[22] minorities?

[23] A: I was not.

[24] Q: Do you recall Mr. Mistovich or anyone else

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[1] (Document marked as Nevero
[2] Exhibit 10 for identification)
[3] (Telephone Interruption)
[4] THE WITNESS: Excuse me.
[5] Q: Do you know — were you aware of how long
[6] Mr. Mistovich had worked in the railroad system
[7] prior to March 30th of 2004?
[8] A: I did not.
[9] Q: Did you have any knowledge of his family
[10] situation, as to whether he was married?
[11] A: I don't believe I did.
[12] Q: Do you know if he had any children?
[13] A: I don't believe I did.
[14] Q: Okay. After the March 26th meeting, the
[15] first meeting, do you recall either Mr. Urban or Ms.
[16] Bowden or yourself ever making a suggestion of
[17] checking with Amtrak supervisors about Mr.
[18] Mistovich's —
[19] (Telephone interruption)
[20] MS. RUBIN: Can we go off the record for a
[21] second?
[22] THE WITNESS: Yes. That was just my phone
[23] again.
[24] MS. RUBIN: Can you ask the question again

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[1] because I think he was distracted.
[2] Q: Let me go back a step. After the March
[3] 26th meeting and prior to the meeting or either at
[4] the meeting with Mr. Lydon, do you remember anyone
[5] suggesting that someone check with Mr. Mistovich's
[6] supervisors at Amtrak concerning his hiring
[7] practices?
[8] A: I don't recall that.
[9] Q: Okay. Let me just have a few words with
[10] Mr. Mistovich, and I'll be back.
[11] (Brief recess)
[12] MR. TEAGUE: I have no further questions.
[13] MS. RUBIN: Okay. We're all set. Thank
[14] you.
[15] (Whereupon, the deposition was
[16] concluded at 12:16 p.m.)
[17]
[18]
[19]
[20]
[21]
[22]
[23]
[24]

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CERTIFICATE

[1]
[2] I, STEPHEN NEVERO, do hereby certify that I have
[3] read the foregoing transcript of my testimony, and
[4] further certify under the pains and penalties of
[5] perjury that said transcript (with/without)
[6] suggested corrections is a true and accurate record
[7] of said testimony.
[8] Dated at __, this day of ,
[9] 2005.
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[1] COMMONWEALTH OF MASSACHUSETTS)
[2] SUFFOLK, SS.)
[3] I, Mary V. Teehan, Certified Shorthand Reporter
[4] and Notary Public in and for the Commonwealth of
[5] Massachusetts, do hereby certify that there came
[6] before me on the 15th day of September, 2005, at
[7] 10:32 a.m., the person hereinbefore named, who was
[8] by me duly sworn to testify to the truth and nothing
[9] but the truth of his knowledge touching and
[10] concerning the matters in controversy in this cause;
[11] that he was thereupon examined upon his oath, and
[12] his examination reduced to typewriting under my
[13] direction; and that the deposition is a true record
[14] of the testimony given by the witness.
[15] I further certify that I am neither attorney or
[16] counsel for, nor related to or employed by, any
[17] attorney or counsel employed by the parties hereto
[18] or financially interested in the action.
[19] In witness whereof, I have hereunto set my hand
[20] and affixed my notarial seal this ____ day of
[21] September, 2005.
[22]
[23] Notary Public
[24] My commission expires 7/18/2008

OPPOSITION EXHIBIT 5 – Deposition of Alison Leaton

In The Matter Of:

*Eli Mistovich, Jr. v.
Elizabeth Bowden, et al.*

*Alison Leaton
Vol. 1, September 29, 2005*

*Doris O. Wong Associates, Inc.
Professional Court Reporters
50 Franklin Street
Boston, MA 02110
(617) 426-2432*

*Original File LEATON.V1, 117 Pages
Min-U-Script® File ID: 1940373277*

Word Index included with this Min-U-Script®

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[1] A: No.
[2] Q: And when was the last time you were
[3] employed?
[4] A: June.
[5] Q: June of 2005?
[6] A: Yes.
[7] Q: Okay. And who were you employed by then?
[8] A: Spire.
[9] Q: Is that a company?
[10] A: Yes.
[11] Q: And how do you spell that?
[12] A: S-p-i-r-e.
[13] Q: And where is Spire located?
[14] A: Dorchester.
[15] Q: And what is the business of the Spire?
[16] A: Marketing and printing.
[17] Q: And how long did you work for Spire before
[18] June of 2005?
[19] A: Ten months.
[20] Q: And what was your position?
[21] A: Human Resources manager.
[22] Q: And were you an employee of Spire?
[23] A: Yes.
[24] Q: And why did you leave Spire?

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[1] A: Small family-owned business.
[2] Q: Well —
[3] A: I couldn't do my job because of that.
[4] Q: Could you explain that.
[5] A: I was the only member of the leadership
[6] team that wasn't related,
[7] Q: Okay. Were you asked to leave?
[8] A: No.
[9] Q: Did you resign voluntarily?
[10] A: Yes.
[11] Q: And before — prior to going to work for
[12] Spire, what was your next previous employment?
[13] A: Boston Financial Data Services.
[14] Q: And what did you do at Boston Financial
[15] Data Services?
[16] A: I was a recruiter.
[17] Q: And how long did you work for Boston
[18] Financial Data Services?
[19] A: Approximately two months.
[20] Q: And would that have been between June and
[21] August of two thousand — or between June and August
[22] of 2004?
[23] A: Approximately, yes.
[24] Q: Why did you leave Boston Financial

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[1] Services?
[2] A: It was a contract. I left for Spire.
[3] Q: Okay. Were you a contractor, independent
[4] contractor, for Boston Financial Services?
[5] A: I was working there through Winter,
[6] Wyman — or, excuse me, Pappas & Pappas.
[7] Q: And before Boston Financial where were you
[8] employed?
[9] A: MBCR.
[10] Q: Okay. And you were a contract employee
[11] at — or a contract, an independent contractor, at
[12] MBCR, correct?
[13] A: Yes.
[14] Q: Did you work full time at MBCR? In other
[15] words —
[16] A: Yes.
[17] Q: Okay. What dates were you employed at MBCR
[18] as an independent contractor?
[19] A: Approximately September — I don't remember
[20] the date I started in September of '03 until
[21] sometime in April of '04.
[22] Q: And did you have a particular job
[23] assignment at MBCR?
[24] A: I was a recruiter.

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[1] Q: Okay. And what were your duties as a
[2] recruiter?
[3] A: To hire and fill open positions.
[4] Q: Did this include both management positions
[5] and the labor force?
[6] A: Yes.
[7] Q: How did you come to work for MBCR?
[8] A: Winter, Wyman referred my resume to them,
[9] and I interviewed with Liz Bowden.
[10] Q: Did you know Liz Bowden before your
[11] interview?
[12] A: No.
[13] Q: I'm going to show you a document that was
[14] produced by — by MBCR, actually, in this case,
[15] Bates stamped 26 through 28.
[16] A: (Reviewing document)
[17] Q: And do you recognize that document, Ms.
[18] Leaton?
[19] A: Yes.
[20] MR. TEAGUE: Off the record.
[21] (Discussion off the record)
[22] Q: And is that a copy of a resume you
[23] submitted to MBCR?
[24] A: It's a copy of a resume that Winter, Wyman

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[1] submitted to MBCR.
[2] Q: And you were an employee of Winter, Wyman;
[3] is that correct?
[4] A: That's correct.
[5] Q: And they would place temporary HR
[6] workers —
[7] A: Contract HR workers.
[8] Q: Contract HR workers with various clients;
[9] is that how it worked?
[10] A: Yes.
[11] Q: And how long had you worked at Winter,
[12] Wyman as an independent contractor before being
[13] assigned to MBCR?
[14] A: I had worked on contracts with them prior
[15] to that with BT Conferencing.
[16] Q: And is this resume from Winter, Wyman, is
[17] that accurate?
[18] A: Yes.
[19] Q: That contains an accurate summary of your
[20] employment and education?
[21] A: Yes.
[22] MR. TEAGUE: Why don't we mark Ms. Leaton's
[23] Winter, Wyman resume as Leaton Exhibit 34.
[24]

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[1] (Document marked as Leaton
[2] Exhibit 34 for identification)
[3] Q: And did you — can you describe for me any
[4] work experience that you had in the railroad
[5] industry before coming to work at MBCR?
[6] A: I did not have any.
[7] Q: When you came to work at MBCR, was your
[8] contract for a set period of time as recruiter?
[9] A: Three to six months.
[10] Q: And when you left MBCR, it was in April of
[11] 2003, is that correct —
[12] A: Yes.
[13] Q: — 2004. I'm sorry.
[14] A: 2004, yes.
[15] Q: Why did you leave?
[16] A: Contract ended.
[17] Q: Were you offered a follow-up contract by
[18] MBCR?
[19] A: No.
[20] Q: Do you recall while working at MBCR meeting
[21] Eli Mistovich, the Plaintiff in this action?
[22] A: Yes.
[23] Q: You did not have any dealings with Mr.
[24] Mistovich before you came to work at MBCR, did you?

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[1] A: No.
[2] Q: Do you recall that Mr. Mistovich was
[3] terminated from his employment at MBCR in March of
[4] 2004?
[5] A: Yes.
[6] Q: Do you have any knowledge of how long Mr.
[7] Mistovich had worked for MBCR before he was
[8] terminated?
[9] A: Yes.
[10] Q: And what is your understanding of how long
[11] he had worked for MBCR?
[12] A: When the contract was taken over from
[13] Amtrak.
[14] Q: And how did you know that?
[15] A: Because that's when all the employees that
[16] worked there came over.
[17] Q: That was before you were assigned to MBCR,
[18] correct?
[19] A: Yes.
[20] Q: Do you recall what Mr. Mistovich's job
[21] title was at MBCR?
[22] A: Not specifically, no.
[23] Q: Do you know what his responsibilities were?
[24] A: Running the Track Department.

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[1] Q: Now, do you recall when you first had any
[2] interaction with Mr. Mistovich while you were
[3] assigned at MBCR?
[4] A: Not specifically. Probably sometime in
[5] October.
[6] Q: And do you recall what the circumstances of
[7] that initial interaction were?
[8] A: He had open job requisitions.
[9] Q: I'm sorry. He had open job requisitions?
[10] A: Yes.
[11] Q: And what were those job requisitions for?
[12] A: Track workers.
[13] Q: Do you recall how many?
[14] A: Not specifically, no.
[15] Q: Was it more than ten?
[16] A: No.
[17] Q: Was it more than five?
[18] A: It was probably around five.
[19] Q: And do you recall how you came into initial
[20] contact with Mr. Mistovich?
[21] A: I called him on the phone.
[22] Q: Okay. And what do you recall saying to him
[23] in substance?
[24] A: I don't recall specifics at all.

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- [1] Q: Do you recall how many employees worked
 [2] under Mr. Mistovich in the Track Department?
 [3] A: No.
 [4] Q: Did you understand that Mr. Mistovich did
 [5] have employees who worked under his supervision?
 [6] A: Yes.
 [7] Q: Is it your understanding that Mr. Mistovich
 [8] as head of the Track Department had some
 [9] responsibilities with respect to hiring new
 [10] employees?
 [11] A: Yes.
 [12] Q: And what was your understanding of his
 [13] function?
 [14] A: He was the hiring manager.
 [15] Q: And what did the hiring manager do with
 [16] respect to hiring new employees back in the fall of
 [17] 2003 or winter of 2004?
 [18] A: We would interview together and make
 [19] decisions based on the candidate's interview.
 [20] Q: Now, you said you were — did you have a
 [21] title while you worked at MBCR?
 [22] A: Recruiter.
 [23] Q: Were there any other recruiters besides
 [24] you?

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- [1] Banner?
 [2] A: It was one of the requirements that was
 [3] told to me during my orientation with Liz Bowden.
 [4] Q: Okay. What community does the Bay State
 [5] Banner serve?
 [6] A: I'm not 100 percent sure.
 [7] Q: Where is the Bay State Banner located?
 [8] A: I don't know.
 [9] Q: Were these postings placed in other Boston
 [10] media such as, say, the Boston Globe or the Boston
 [11] Herald?
 [12] A: No.
 [13] Q: Just the Bay State Banner?
 [14] A: Yes.
 [15] Q: Did anyone ever explain to you why that
 [16] would be the only newspaper that the job postings
 [17] would be placed in?
 [18] A: Not to my recollection.
 [19] Q: And as the recruiter, who did you report to
 [20] at MBCR?
 [21] A: Liz Bowden.
 [22] Q: Did you have any understanding of Mr.
 [23] Mistovich's employment background before he had come
 [24] to work for MBCR?

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- [1] A: No.
 [2] Q: What were your duties as a recruiter?
 [3] A: To hire and fill any open requisitions.
 [4] Q: And how did you go about performing your
 [5] duties?
 [6] A: In what — specifically what are you...
 [7] Q: Your duties were to hire and fill open
 [8] requisitions. What would be the first step that you
 [9] would take in that position?
 [10] A: Call the hiring managers, introduce myself
 [11] to the hiring manager if it wasn't someone I had
 [12] already been working with, talk to them about what
 [13] they were looking for in the position, proceed to
 [14] post the position both within MBCR, with the Bay
 [15] State Banner, and e-mailing the organization with
 [16] the posting attached.
 [17] Q: I'm sorry. I don't understand. Which
 [18] organization would you e-mail that to?
 [19] A: MBCR, the internal organization.
 [20] Q: And what about outside of MBCR?
 [21] A: We posted with the Bay State Banner.
 [22] Q: And what is the Bay State Banner?
 [23] A: It's a community newspaper.
 [24] Q: And why did you post a job in the Bay State

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- [1] MS. RUBIN: Objection.
 [2] MR. TEAGUE: What's your objection?
 [3] MS. RUBIN: I'm not sure what you mean by
 [4] "understanding" in this context.
 [5] MR. TEAGUE: Well, that's a...
 [6] Q: Do you have any understanding about what
 [7] Mr. Mistovich's employment background was before he
 [8] came to work at MBCR?
 [9] A: Are you asking what he did before he came
 [10] to MBCR?
 [11] Q: Yes.
 [12] A: Where he worked?
 [13] Q: Yes.
 [14] A: Amtrak.
 [15] Q: How do you know that?
 [16] A: I was told that.
 [17] Q: Who told you that?
 [18] A: Mr. Mistovich.
 [19] Q: Do you know how long he had worked at
 [20] Amtrak before he came to work at MBCR?
 [21] MS. RUBIN: Objection.
 [22] A: No.
 [23] MS. RUBIN: You can answer.
 [24] A: No.

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[1] conclude that he was black?
[2] A: It's the address more than anything else.
[3] Q: So it was not the name?
[4] A: It was the address.
[5] Q: Oh, okay. Before you said it was the name.
[6] Did the name have anything to do with suggesting
[7] that he was black?
[8] A: I don't recall.
[9] Q: The address is 194 Normandy Street,
[10] Dorchester, Massachusetts. What is there about that
[11] address that would lead it — lead you to conclude
[12] that Mr. Mistovich assumed he was black?
[13] A: Because it was a predominantly black area
[14] in the city.
[15] Q: What is?
[16] A: Dorchester.
[17] Q: The entire Dorchester neighborhood?
[18] A: Yes.
[19] Q: Or is it the street "Normandy Street"?
[20] A: I don't know where that street is.
[21] Q: You have no idea where it's located?
[22] A: No.
[23] Q: You just thought most people from
[24] Dorchester are black; is that an assumption that you

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[1] made?
[2] A: No.
[3] Q: Well, then, I'm a little confused. He's
[4] from Dorchester. Mr. Mistovich said, "I haven't had
[5] good luck with people like that." What is it that
[6] you led you to conclude he was talking about Mr.
[7] Morgan's race?
[8] A: Because when I said, "You haven't had good
[9] luck with white people either," his response to me
[10] was, "Well, I've had less" — "I've had more
[11] problems with people like that than with white
[12] people."
[13] Q: That's words out of Mr. Mistovich's mouth?
[14] A: To the best of my recollection, yes.
[15] Q: You're under oath now. That's what you're
[16] saying he said.
[17] A: To the best of my recollection, yes.
[18] Q: What did you say?
[19] A: I told him that it was illegal to
[20] discriminate against candidates based on their race,
[21] and that we needed to interview him. He's as
[22] qualified, and that if he does well on the interview
[23] process and his references pan out, that we should
[24] make him an offer.

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[1] And I also told him in that same
[2] conversation that I would not make him hire a
[3] minority whom I didn't feel was qualified for the
[4] position or as qualified for the position as someone
[5] who was not a minority, and that if — otherwise, if
[6] they were, I would go to the mat.
[7] Q: What did he say?
[8] A: He said, "Well," — to the best of my
[9] recollection, he said, "I don't" — "I can't win
[10] this argument. I don't see the point in arguing it.
[11] I'm not getting in a discussion that I'm not going
[12] to win."
[13] Q: Well, what was there about his work record
[14] that you thought was good? I mean, he had a CDL —
[15] A: He had a CDL and he had almost ten years
[16] with the same company. So he had longevity at one
[17] company and had been consistently employed for a
[18] long period of time.
[19] Q: Are you talking about the first, "Jet a Way
[20] Disposal and Recycle"?
[21] A: Yes.
[22] Q: But it appears that he had left their
[23] employment in 2002; is that correct?
[24] A: Correct. According to the document, yes.

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[1] Q: Do you have any information as to why —
[2] what his employment was as of the time of the
[3] interview?
[4] A: I don't recall.
[5] Q: Do you recall from what source you got Mr.
[6] Morgan's resume?
[7] A: By fax.
[8] Q: Do you recall if you got it from Mr. Morgan
[9] himself?
[10] A: Yes.
[11] Q: Did Mr. Mistovich say anything about the
[12] fact that it appeared that Mr. Morgan had been
[13] unemployed after 2002?
[14] A: Not to my recollection.
[15] Q: Do you recall Mr. Mistovich mentioning it
[16] did not appear that Mr. Morgan had any construction
[17] experience?
[18] A: Not to my recollection.
[19] Q: Do you see anything on his resume that
[20] indicates that there is construction experience in
[21] Mr. Morgan's background?
[22] A: No.
[23] Q: What else did you say during the course of
[24] this discussion about Mr. Morgan?

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[1] March 5th, 2004?
[2] A: Yes.
[3] Q: And when did you first contact Ms. Bowden?
[4] A: I don't recall the specific date.
[5] Q: Do you recall whether it was on March 5th
[6] after you had your discussion?
[7] A: Probably not. Probably the next day,
[8] maybe.
[9] MS. RUBIN: Don't speculate.
[10] THE WITNESS: Okay.
[11] Q: Was it, your discussion with Ms. Bowden,
[12] before March 11th?
[13] A: Yes.
[14] Q: Okay. And was this a telephone discussion?
[15] A: No.
[16] Q: Face-to-face discussion?
[17] A: Yes.
[18] Q: Was there more than one discussion between
[19] March 5th and March 11th?
[20] A: I don't recall.
[21] Q: Okay. Where did the discussion take place?
[22] A: In her office.
[23] Q: Where was her office?
[24] A: Oh, sorry. South Street.

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[1] Q: Basically where yours was?
[2] A: Yes.
[3] Q: And what did you say and what did Ms.
[4] Bowden say during this discussion before March 11th?
[5] A: I let her know that a discussion had taken
[6] place with Mr. Mistovich regarding this candidate,
[7] and that the situation was under control but that
[8] she needed to be aware of it.
[9] Q: Well, did you elaborate on what the
[10] situation was?
[11] A: Yes. I told her about the conversation I
[12] had with Eli — excuse me — Mr. Mistovich, and that
[13] we were interviewing the candidate, and I had
[14] communicated to Mr. Mistovich that if all went well,
[15] we would hire the candidate, and I told her all of
[16] that.
[17] Q: Why did you inform Ms. Bowden of this?
[18] A: It's my obligation — it was my obligation
[19] to the organization to communicate anything that I
[20] thought was discriminatory or of any other kind of
[21] harassment-issue type thing to my superior.
[22] Q: Did you tell Mr. Mistovich you were going
[23] to inform Ms. Bowden of this?
[24] A: No.

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[1] Q: Why not?
[2] A: I don't know. I just didn't.
[3] Q: What, if anything, did Ms. Bowden say?
[4] A: She thanked me for letting her know about
[5] the situation.
[6] Q: Anything else you recall Ms. Bowden saying?
[7] A: Not that I recall.
[8] Q: Did she suggest you take any action?
[9] A: Not that I recall.
[10] Q: And other than that conversation prior to
[11] interviewing Mr. Morgan on March 11th, did you have
[12] any other communications with Ms. Bowden concerning
[13] this matter?
[14] A: Not that I recall.
[15] Q: Did you have any communications with any
[16] members of the diversity committee concerning this
[17] issue?
[18] A: Not that I recall.
[19] Q: Did you have any discussions with any other
[20] officers or employees of MBCR between March 5th and
[21] March 11th, 2004 —
[22] A: Not that —
[23] Q: — concerning your discussion with Eli
[24] Mistovich?

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[1] A: Not that I recall.
[2] Q: Okay. On March 11th or any time prior
[3] thereto, did you tell Mr. Mistovich of what you had
[4] informed Ms. Bowden of?
[5] A: No.
[6] Q: Was there a reason why you didn't tell Mr.
[7] Mistovich?
[8] A: It wasn't necessary to tell him.
[9] Q: You didn't think he needed to know?
[10] made that kind of report to him?
[11] A: Yes.
[12] Q: Why was that?
[13] A: It wasn't relevant.
[14] wasn't necessary.
[15] Q: Fair to say you didn't
[16] to talk to Mr. Bowden?
[17] correct?
[18] MS. RUBIN:
[19] A: No.
[20] Q: After March 11th,
[21] On March 11th, did you
[22] MS. RUBIN:
[23] question any
[24] MS. LEONARD:

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[1] meant by "people like that"? And then your response
[2] according to Ms. Bowden's note is, "What do you
[3] mean? No answer given." And then you say, "It's
[4] illegal Eli to do that, not interview people because
[5] you think they're black?" And then it says,
[6] "Greater percentage of people like that, again, did
[7] you confirm that he meant blacks or all diversity?
[8] Was there any room for misinterpretation?" And then
[9] you said, "No confirmation." Do you recall that?

[10] A: Not specifically, but...

[11] Q: But you had indicated to Ms. Bowden in your
[12] e-mail of March 16th that that was an accurate
[13] summary of your meeting?

[14] A: Yes.

[15] Q: Okay. So do you recall other than what's
[16] stated here making any efforts to confirm that Eli,
[17] Mr. Mistovich, meant blacks?

[18] A: Not other than we've discussed prior.

[19] Q: Okay. And then you said, "No room for
[20] misinterpretation." Do you recall saying that?

[21] A: Well, she asked me, "Was there any room for
[22] misinterpretation?" And I said, "No."

[23] Q: And there was no doubt in your mind that he
[24] had meant to eliminate Mr. Morgan from the interview

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[1] process because he was black?

[2] A: No.

[3] Q: Okay. Now, on the second page — and it's
[4] detached on what you're looking at — it says, "What
[5] did Eli say or do differently before, during or
[6] after the interviews of minority candidates?" You
[7] said, "No difference. When asked what he thought,
[8] Eli said, 'Fine.'" That refers to Mr. Morgan; is
[9] that correct?

[10] A: Yes.

[11] Q: "Of the 11 interviewed" or "How many of the
[12] 11 interviewed are prospective hires?" You said,
[13] "Seven," correct?

[14] A: Uh-huh.

[15] Q: "If the references of all seven are
[16] positive, who would make the final decision?" And
[17] you said, "The hiring manager" —

[18] A: Uh-huh.

[19] Q: — correct? You have to say "Yes."

[20] A: Oh, sorry, yes.

[21] Q: So is it fair to say that it was Eli
[22] Mistovich that made the final decision to hire Mr.
[23] Morgan?

[24] A: I'm not sure.

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[1] Q: Well, if it wasn't Mr. Mistovich, who did
[2] make the final decision to hire Mr. Morgan?

[3] A: Well, based on the discussions that he and
[4] I had prior, he knew it was not a negotiation if
[5] everything went well with the interview and the
[6] references.

[7] Q: Did he say that to you?

[8] A: No. Based on the other conversations we
[9] had.

[10] Q: Okay. Well, then, when you said, "The
[11] hiring manager made the final decision," to Ms.
[12] Bowden on March 16th, 2004, was that a correct
[13] statement?

[14] A: In 99 percent of the cases, yes.

[15] Q: Well, you didn't say 99. You said, "The
[16] hiring manager." She was referring to the seven
[17] track positions, correct?

[18] A: Correct.

[19] Q: It was a specific question, "If all the
[20] references of all seven were positive, who would
[21] make the final decision?" And your answer was, "The
[22] hiring manager," correct?

[23] A: Yes.

[24] Q: And you confirmed that those questions were

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[1] accurate in your e-mail of March 16th, 2004: is that
[2] correct?

[3] A: Uh-huh.

[4] Q: You have to say "yes."

[5] A: Yes.

[6] Q: Are you telling us now that that answer is
[7] incorrect?

[8] A: No.

[9] Q: Okay. So it's fair to say as of March
[10] 16th, 2004, you were aware that Ms. Bowden was
[11] conducting an inquiry as to what had happened during
[12] your conversation, correct?

[13] A: Correct.

[14] Q: And you were aware that this inquiry could
[15] result in the termination of Mr. Mistovich's
[16] employment, correct?

[17] A: Potentially.

[18] Q: As of March 16th, did you inform Mr.
[19] Mistovich as to the report that you had made to Ms.
[20] Bowden?

[21] A: No.

[22] Q: Between — well, let's go back a step.
[23] Were you aware that Ms. Bowden had scheduled a
[24] meeting with Mr. Mistovich on March 26th, 2004, to

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[1] between March 11th and Mr. Mistovich's termination
[2] about the allegations that you had made concerning
[3] Mr. Morgan?

[4] A: Not that I recall.

[5] Q: Let me show you Exhibit 31.

[6] A: (Reviewing document)

[7] Q: Do you recognize that document, Ms. Leaton?

[8] A: Yes.

[9] Q: And that's an e-mail from you to Ms. Bowden
[10] of March 25th, 2004, correct?

[11] A: That's correct.

[12] Q: And it refers to Mr. Mistovich calling you
[13] "this morning," which was March 25th around 9:00
[14] a.m., and asking if you knew anything about the
[15] e-mail Ms. Bowden had apparently sent to him on
[16] hiring concerns; do you recall Mr. Mistovich
[17] telephoning you?

[18] A: Yes.

[19] Q: And what do you recall him saying to you in
[20] that conversation?

[21] A: I don't recall anything specifically.

[22] Q: Do you feel that the e-mail that you sent
[23] to Ms. Bowden describing that telephone call was
[24] accurate?

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[1] A: No.

[2] Q: Why didn't you tell Mr. Mistovich the truth
[3] when he called you?

[4] A: It was a confidential investigation.

[5] Q: As of March 25th, had Ms. Bowden instructed
[6] you not to speak to Mr. Mistovich about this
[7] subject?

[8] A: Yes.

[9] Q: What did she say?

[10] A: I don't recall her specific words.

[11] Q: She told you, "Don't tell Mr. Mistovich
[12] that we're having an investigation," words to that
[13] effect?

[14] A: I don't recall her specific words.

[15] Q: I'll show you — if I can have that one
[16] back — Exhibit 32. Do you recognize that document,
[17] Ms. Leaton?

[18] A: Yes.

[19] Q: And that's an e-mail you sent to Ms. Bowden
[20] on Friday, March 26th, at 5:15 p.m., correct?

[21] A: That's what it says.

[22] Q: And did you have a conversation with Ms.
[23] Bowden on March 26th?

[24] A: Apparently.

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[1] A: Yes.

[2] Q: You told Mr. Mistovich you didn't know
[3] anything about it, about the meeting, or the hiring
[4] decisions, do you recall that, he needed to speak to
[5] Ms. Bowden?

[6] A: Yes.

[7] Q: That's not a truthful statement, is it,
[8] that you didn't know anything about it; in fact you
[9] did know about it, didn't you?

[10] A: Yes.

[11] Q: And you didn't tell Mr. Mistovich the truth
[12] when you said you didn't know anything about it?

[13] A: Well, I didn't know about the meeting
[14] specifically scheduled.

[15] Q: Well, you knew about the concerns about
[16] some of the recent hiring decisions, correct?

[17] A: Correct.

[18] Q: And you didn't reveal that to Mr.
[19] Mistovich, correct?

[20] A: Correct.

[21] Q: And you told him you didn't know anything
[22] about that, correct?

[23] A: Correct.

[24] Q: And that was not the truth, was it?

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[1] Q: And do you recall what was said during that
[2] conversation?

[3] A: Not specifically, no.

[4] Q: Did Ms. Bowden ask you to send her an
[5] e-mail about the comments that you had made during
[6] the conversation?

[7] A: Apparently.

[8] Q: Well, do you recall?

[9] A: I don't recall, no.

[10] Q: And there's a number of bullet points that
[11] you recited to Ms. Bowden. Do you recall making —
[12] do you recall those statements?

[13] A: Not specifically, no.

[14] Q: Okay. Other than looking at this, do you
[15] recall sending this e-mail?

[16] A: No.

[17] Q: Did Ms. Bowden indicate to you if you
[18] recall why she wanted you to send her an e-mail?

[19] A: Not to my recollection, no.

[20] Q: Now, if you go to — scrolling the fifth
[21] bullet back down —

[22] A: Uh-huh.

[23] Q: — it starts with, "I want back." You see
[24] that one?

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[1] A: I don't recall.
[2] Q: Well, you had a discussion; is that
[3] correct?
[4] A: Yes.
[5] Q: Okay. Do you recall about how long after
[6] the termination?
[7] A: No.
[8] Q: Okay. And what do you recall being said
[9] during that discussion?
[10] MS. RUBIN: Wait. I just want to — to the
[11] extent — can I just talk with her. I just want to
[12] make sure there are no attorney/client issues.
[13] MR. TEAGUE: Sure.
[14] (Ms. Rubin and witness leave the room and
[15] return)
[16] MS. RUBIN: Ms. Leaton can testify as to
[17] any communications she recalls with Ms. Bowden; but
[18] as to any communications that she had with Mr. Davey
[19] after the termination, I'm not going to allow her to
[20] answer those questions on the grounds of
[21] attorney/client privilege.
[22] MR. TEAGUE: Well, obviously she's — let
[23] me go off the record.
[24] (Discussion off the record)

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[1] MR. TEAGUE: Let me go back on the record.
[2] Q: If my understanding is correct, you had a
[3] conversation with Richard Davey at some point after
[4] Mr. Mistovich's termination, correct?
[5] A: Yes.
[6] Q: Okay. And was anyone else present?
[7] A: No.
[8] MR. TEAGUE: My understanding is that,
[9] Attorney Rubin, you're asserting attorney/client
[10] privilege?
[11] MS. RUBIN: As to those communications,
[12] correct.
[13] Q: And you had other communications with
[14] Elizabeth Bowden after the termination, correct?
[15] A: Yes.
[16] Q: And other than what you've already
[17] testified to, can you recall where those
[18] conversations took place?
[19] A: In her office.
[20] Q: And was there more than one?
[21] A: I don't know.
[22] Q: What do you recall being said during that
[23] conversation?
[24] A: She told me he had been terminated.

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[1] Q: And anything else?
[2] A: She told me that when he was confronted
[3] with the allegations, he said, "I have a whole
[4] drawer full of reasons why I don't hire people like
[5] that."
[6] Q: Do you recall anything else she said?
[7] A: Not specifically, no.
[8] Q: Do you recall anything you said?
[9] A: No.
[10] Q: Other than that conversation, did you have
[11] any other discussions with Ms. Bowden?
[12] A: I don't recall.
[13] Q: Any other discussions with any officer or
[14] employee at Amtrak other than Mr. Lydon and Mr.
[15] Davey — I'm sorry. Let me rephrase the question.
[16] I said "Amtrak."
[17] Other than your discussions with Ms.
[18] Bowden, Mr. Lydon and Mr. Davey which you've
[19] testified to today, after Mr. Mistovich's
[20] termination did you have any discussions with any
[21] officer or employee or consultant with MBCR about
[22] his termination?
[23] A: Not that I recall, no.
[24] MR. TEAGUE: Okay. I need just a minute

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[1] here.
[2] (Pause)
[3] Q: I'm going to show you Exhibit 29. We've
[4] previously discussed it. At the bottom there's your
[5] e-mail to Ms. Bowden of March 11th. Do you see
[6] that?
[7] A: Uh-huh.
[8] Q: You have to say --
[9] A: Yes. I'm sorry.
[10] Q: Okay. In the next to last paragraph on the
[11] first page, it says, "As I said, I pushed back and
[12] we interviewed him today. He did very well in the
[13] interview and I'm checking his references. Harold
[14] was present thankfully in the interview." Who is
[15] Harold?
[16] A: Harold Hoffman was a member of the
[17] diversity committee.
[18] Q: So he was present during the Morgan
[19] interview?
[20] A: Yes.
[21] Q: Okay. Why did you say "thankfully" in your
[22] e-mail to Ms. Bowden?
[23] A: I don't recall.
[24] Q: Other than saying he was a member of the

OPPOSITION EXHIBIT 6 – Deposition Exhibits 1,2,5,6,8,11,18-22 and 28-32

MBCR



Date: 9/25/2003
To: Stephen Nevero
Cc: Dave Schevis, John Ruggiero, Peter Wright
From: Eli Mistovich
RE: Force Attrition vs. New Hires

I understand that MBCR bid the Contract based on a June 1, 2002 AMTRAK Force Account.

The last hiring for the Track Department took place during Autumn, 2001. During 2002 and into 2003 a hiring freeze was in effect. During this period, the Track Department suffered attrition of thirty-seven (37) employees - names and documentation are attached.

The MBCR Contract includes a huge increase in the scope of track work from 25,000 to 35,000 ties, from 8 to 15 grade crossings and a seven mile welded rail job! A conservative estimate would require an additional fifteen (15) full time track employees to accomplish this additional scope work.

We agree that to accomplish the above increased scope will require a Production Crew of approximately 35 employees for 7 months. This contrasts to 3 months under the former Contract to install 25,000 ties. The net effect is that for 4 months 35 employees will be deferring maintenance work.

As winter approaches, we will be unable to perform snow duty per MBTA expectations or Contract requirements. As discussed at the Snow meeting one month ago as MBTA Construction rebuilds each station it increases platform and parking lot size further increasing the scope of snow duty.

In summary the Track Department is expected to perform the above increased Production work and snow duty without deferring normal track maintenance and with 37 fewer employees.

This is a request to hire 37 new employees to perform the above work in compliance with the MBCR Contract.

Attachments

Grant - Nelson
Grant - off

MARVIN F. MORGAN JR.

194 Normandy Street

Dorchester, MA 02121

(617) 445-2035

C.D.L. B CERTIFIED

(617) 265-9981

COMPLETED

LM 8/9/04
w/ gran in car
who's not seen
him for 3 mos.
- 12 noon 3/11

EDUCATION

Dorchester High School

New England Tractor Trailer Training School

EMPLOYMENT HISTORY

Jet a Way Disposal & Recycle

1993 - 2002

Duties

Roll-Off Driver 66,000 1B G.V.W.

Packer Driver 60,000 1B G.V.W.

Snow Plow Driver

Hydraulic Heavy Equipment Operator

966 Cat Front End Loader

300 Komatsu Grapple

310 Komatsu Grapple

Bobcat Operator

Waste Management Woburn Division Boston/North

1991 - 1992

Duties

Roll-Off Driver 66,000 1B G.V.W.

Packer Driver 60,000 1B G.V.W.

Ann & Hope Dept Store, Watertown Arsenal Mall

1990 - 1991

Duties

Warehouse Facility, Shipping & Receiving dock

Stock Merchandise in Proper Storage Area

Maintain Warehouse

Retrieve Merchandise for Shipping

Equipment Operated

Electric & Propane Gas Fork Lift

Electric Aerial Lift

Delta Air Lines, Cargo Warehouse, Logan Airport

1990-1990

Duties

Load & Unload Cargo from Delta Air Planes

Stock Cargo in Delta Warehouse

Load & Unload Cargo from Shipping & Rec. dock

Equipment Operated

Propane Gas Fork Lift

duplicate
Answer

Meg's skill
Answer



United Parcel Service, Watertown Facility 1989-1990
Duties

Parcel Delivery Driver 4000 1B G.V.W.
Maintain Delivery & Pick Up Order Log

D. Trucking Co. Inc. 1982-1988
Duties

Preventive Maintenance Hydraulic Equipment
Roll-Off Driver 66,000 1B G.V.W.
Picker Driver 60,000 1B G.V.W.
956 Cat Front end Loader
Snow Plow Driver

Elizabeth Bowden

From: Alison Leaton
Sent: Thursday, March 11, 2004 4:56 PM
To: Elizabeth Bowden
Subject: RE: Information



Hi Liz,

The only conversation I had with Eli about whom to interview and not was late last week based on interviewing additional candidates. So, in that conversation I went over additional resumes that I'd screened as yeses and he did not want to interview a person who was, based on name and where he lived being Eli's assumption, that he was black. I pushed very hard and basically told him that we were going to interview him because he was as qualified, if not more so, than other candidates.

He was not happy about it and said he'd not had "good luck" with people "like that" in the past. He said there has been a "greater percentage" of people like that who are problems for him. I did tell him I was not going to "make him hire a minority if they were not qualified, but if they are I will go to the mat". He was not happy about it, but seemed resigned. I'm fairly certain he trusts me enough to just go along if necessary, and I push.

As I said I pushed back and we interviewed him today. He did very well in the interview and I am checking his references. Harold was present (thankfully) in the interview. So if his references check out we will make him an offer.

Please let me know if you need anything else. This is the only conversation I've had with Eli around this.

Alison

-----Original Message-----

From: Elizabeth Bowden
Sent: Thursday, March 11, 2004 2:14 PM
To: Alison Leaton
Subject: Information

Alison

Please provide me a detailed outline regarding the conversation you had with Eli regarding his choice of who to interview and not and how the candidates interviewed were selected.

I need this by the close of business Friday - by email

Thanks

Liz



MAR 15/04 - BETH/LR/STEV

- ELI - TRUCK INTERVIEWS - FOLLOWUP DISCUSSION

REDACTED

M-0004

1/20/04

NAME	TRACK	(RESUMES - NEW)	E. MISTOVICH
1) SHAWN KEENAN	S.T. 11 YEARS	CDL B, HOISTING IC	
2) JEFFREY CARNETT	S.T. 5 YRS	CDL B, HYDR. 1423, FORUM	
3) MICHAEL SILVA	S.T. 4 YRS		
4) DENNIS ANTAYA	S.T. 4 YRS	CDL B, SPERRY 2 YRS	
5) BRIAN HARRINGTON	S.T. 3 YRS		
6) DAVE DION	S.T. 3 YRS		
7) JAMES FITZGERALD		CDL A	
8) KEVIN CROWLEY		CDL, HOISTING	
9) ANTHONY LWA	15 YRS	CAMPBELL	
10) BRUCE BLOOM			
11) DAMIEN SANTOS			
12) MICHAEL GREEN			
13) JOE FAGUNDES			
14) JONATHAN CLARK		WELDING	
15) VINCENT BERNARDIS		WELDING CERTIF, CDL	
16) CAMERON MURTAGH	C.P. 5 YRS	(BRITISH COLUMBIA)	
17) JOHN WILSON		CDL 10 YRS, HOISTING	
18) JOHN HURD		HOISTING	
19) FRANK SARRICA, JR.		PESTICIDE LICENSE	
20) THOMAS SCIONTI	S.T. 4 YRS	AUTOM. AUTO UNLOADING FACILITY	
21) SCOTT CAMANDA			
22) ROBIN DAILEY			
23) ALEX NUTTER			
24) STEVEN CONSALVO		- CDL	
25) PATRICK BAUDIN			
26) JOSEPH de MELO			
27) ANDREW HAZEL			
28) JAY MARCATE		- Hired for BID	



M-0016

- 29) WILLIAM GIORLANDO
- 30) BOB SWANN
- 31) MATTHEW MARCINKIEWICZ
- 32) PATRICK CURRAN
- 33) BRYAN TAYLOR
- 34) BRENDAN ROSSIGNOL
- 35) ROBERT GAY
- 36) LINDSAY POLISSON
- 37) RAFAEL ROMAN
- 38) MAURICE BOND.
- 39) DANA WOODS COACH CLEANER
- 40) MATTHEW REARDON

Interview Questions to ask Eli Mistovich regarding his hiring process
For Trackmen - March 2004.

Review of applicants for the Trackman positions and the decision to interview certain candidates.

Meeting held March 26th @ 1:30 in the Engineering Conference Room - 1st floor Cobble Hill. Present: Steve Nevero, Steve Urban, Eli Mistovich, and Elizabeth Bowden.

Statement from E. Bowden indicating that MBCR is an equal opportunity employer as indicated in the policy signed by our General Manager in August 2003. The reason for the meeting is a report by the Recruiter - Alison Leaton that Eli Mistovich was eliminating qualified applicants because of their name and their home address as indicated on their resume (under the assumption that they were black).

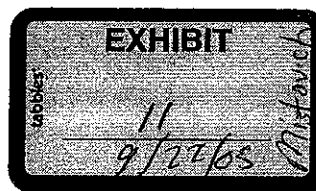
As a result of interviews conducted on March 4th and 5th, 2004 there was a need to consider additional applicants for the open Trackman positions. During a meeting on March 5th between Eli and Alison a qualified resume previously accepted by the Alison and passed over by Eli was represented for consideration. It was at this time that Eli indicated he did not want to interview this person as he had trouble with "people like that" in the past.

When asked about this on March 26th by E. Bowden his first response was that that was true and he had records to validate his statement.

When challenged on this Eli indicated that he had lots of experience in selecting applicants and that his goal was to select the "best or above average candidates" Eli appeared "put out" as he outlined that his comments to the recruiter were he thought "in confidence"

This was agreed to as an acceptable goal - but the issue was the interview consideration process - given that the candidate in question met the qualification requirements. Eli was advised that statements that are contradictory to MBCR policy and in this case a violation of legislation is not "in confidence" and as a manager nothing we say is "off the record" In addition, it would have been a violation for the recruiter not to report it and MBCR not to follow up and investigate.

Eli then indicated that he had interviewed a minority candidate believed one was now hired - so what was the issue? He was advised that the issue was it was the recruiter that insisted this person be considered and in essence "forced" Eli to consider this applicant.



**Interview Questions to ask Eli Mistovich regarding his hiring process
For Trackmen –March 2004.**

Questions:

1. How did you select the candidates for interviews? How many resumes did you receive and review?

I sent approximately 60 resumes to Alison the recruiter and was going to interview all of them. She said that was too many and to "cull" it down based on the specifics of the requirements – selecting the CDL and other related certifications. There were approximately 15 applicants and a couple of extras provided by senior MBCR and/or MBTA staff.

2. How many candidates did you interview? How many minority candidates were interviewed?

The interview process for these openings was ongoing with the first wave of interview not identifying enough qualified applicants to fill the approved requisition so the discussion on March 5th was to identify other potential applicants – all together approximately 15 people we interviewed – 1 or 2 minority candidates.

3. We have been advised that you would not interview certain applicants because of their name and their address – the discussion was that you assumed they were black (minority?). What is your response to this?

I always select the best or above average candidates.

This was not challenged – the point of who got selected for interviews was. Eli would not respond beyond this comment.

As Eli was not providing any information – E. Bowden stated that in the absence of comment from Eli the information from the recruiter was considered accurate and without objection. Eli stated – it sounds like you've already made up your mind. E. Bowden restated that no conclusions have been formed – that is the purpose of this meeting.

Eli chose not to add anything more to the comment and not clarify any points.

M-0010

**Interview Questions to ask Eli Mistovich regarding his hiring process
For Trackmen –March 2004.**

4. You were questioned directly by the recruiter – that the reason you would not interview certain applicants was because of their name and address. Your response was that you had more problems with people like that. What did you mean by this statement?

No further comment be added after the original statement indicating he had in fact had problems.

Eli stated that during the hiring requirements at his previous employer he always exceeded the required numbers. (This cannot be validated by MBCR.)

5. You were then advised that it is illegal to not interview someone because you think they are black. What is your response to this?

Eli advised he could not remember the exact content of the meeting.

When pressed on this given that this type of statement was not the norm for business conversation – Eli responded that we would have to ask the recruiter what it meant.

Eli was advised that that had been done and that it was in response to him refusing to select a qualified applicant for interview based on the name and address – Eli added no other comment.

6. When pressed to interview a diversity candidate the recruiter advised you "it was not about hiring a black person that was not qualified – but if he is I will push really hard." (A.L.) You responded "I can't win this conversation so I'm not going to argue." (E.M.) What did you mean by this statement?

No comment by Eli.

Upon Conclusion all were asked for questions closing comments;
Eli – none, Steve U. – none, Steve N. – of the number interviewed how many had CDL?

**Interview Questions to ask Eli Mistovich regarding his hiring process
For Trackmen –March 2004.**

Interviewer Bowden Observations:

Eli attempted to redirect the conversation a number of times – by suggesting that we needed to ask the recruiter (Alison) what was meant. This had been anticipated and had been done – when informed of this each time Eli had no further comment.

At one point I indicated it appeared he was “stone-walling” he attempted to turn this by indicating that if we wanted to talk about stone walling we should talk about him not getting answers to benefits questions he had. He was advised that this was not the time or place to have a conversation about benefits and if he wanted to take this offline – I would be pleased to do so and that it did not require the participation of the two Steve’s.

At no point did Eli indicate that he was not biased in his hiring practices and did not deny the overall circumstances of the meeting and its content – when pressed on the issues he opted to say nothing.



MASS BAY COMMUTER RAIL

DATE: OCTOBER 13, 2003

JOB TITLE: TRACKMAN

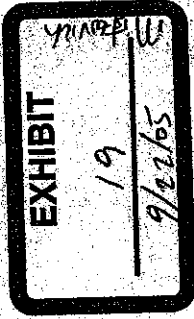
LOCATION: VARIOUS – COMMUTER RAIL SYSTEM

POSITION DESCRIPTION:

This is an entry- level position, applicant should have a background in construction work and be able to use basic hand tools and lift, bend, stoop and carry heavy loads; construct, maintain, repair, inspect track and appurtenances and other duties as assigned on the MBTA Commuter Rail System. Also involves working outside in all types of weather conditions year round as assigned. Have the ability to work with others as well as alone as required. Subject to call outside normal tour of duty. Work snow duty as required.

QUALIFICATIONS:

Must have High School Diploma or Equivalent. Trade and/or vocational training preferred. Must pass a physical examination. Valid Drivers License is a requirement. CDL and/or Hoisting License required. Good communications skills helpful.



Interview Time	Monday, November 24 th	Tuesday, November 25 th
9:30 a.m.	Jeff DeMontigny	Brian Holander
10:30 a.m.	Tony Cotta	Open slot
11:30 a.m.	Daniel Crawford	Open slot
12:30 p.m. - 1 p.m.	Lunch	Lunch
1:00 p.m.	Christian Clark	Gary Cowan
2:00 p.m.	Al Fernandes	David McKenzie
		Jeffrey Roy

Nothing on file

Hired

Hired

DO NOT
WRITE

- REVISER LIST - TRACK RESUMES
- 1) SHAWN KEENAN - S.T. 11 YRS, CDLB, HOISTING 1C
 - 2) JEFF CARROLL - S.T. 5 YRS, CDLB, HOISTING 1A, 2
 - ✓ 3) DENNIS ANTAYA - S.T. 4 YRS, CDLB, SPANNY 2 YR
 - X 4) JAMES FITZGERALD - CDLA
 - X 5) JONATHAN CLARK - WELDING
 - ✓ 6) VINCENT BEAUMAIS - CDL, WELDING CERTIF.
 - ✓ 7) KEVIN CROWLEY - CDLB, HOISTING
 - ✓ 8) FRANK SARRICA - PESTICIDE LICENSE
 - ✓ 9) DEREK BECKWITH - HOISTING 2B
 - X 10) ANTHONY LWA
 - ✓ 11) JOHN MCCANN - CDL A, CONSTRUCTION SUPV. L
 - ✓ 12) IVAN MUISE - CDL B
 - 13) ROBERT WOOD - CDL B
 - ✓ 14) STEVEN CONSALVO - CDL A
 - 15) MICHAEL McMAHON - CDL B

EXHIBIT

20

9/22/05

M. J. V. L.

Track Interviews - BET
Thursday, March 4 and Friday March 5, 2004

Guest Name	Phone Number	Status	Interview Scheduled
Thursday, March 4			
John McCann II	508-543-7392		9:30
Patrick Hurley	617-698-6883		10:30
Kevin Crawley	978-667-2791 or 978-375-4056		11:30
Vincent Beauvais	978-407-2380		1:00
James Fitzgerald	508-399-8454		2:00
Friday, March 5			
Dennis Antaya	603-740-3611		9:30
Ivan Muise	978-768-6112		10:30
Frank Sarriica Jr.	508-520-0175		11:30
Steve Consalvo	617-549-3995		1:00
Derek Beckwith	978-373-4738		2:00

Track Position
Interview at BET
PayRate \$15.53

EXHIBIT

21

9/22/05

Michael

John M. McCann II

165 Chestnut St.

Foxboro Mass.

Phone: (508) 543-7392

Email: lizzard165@msn.com

SUMMARY

Ten years of experience in manufacturing, construction and various building related fields. Key strengths include:

- Excellent customer service skills
- Meeting deadlines
- Strong attention to detail
- Supervising others

EMPLOYMENT/EXPERIENCE

McCann Construction - Owner (1999-Present / Part time since 1993)

- Handles all estimates, scheduling and coordination of sub-contractors.
- Construction of additions, garages, and decks.
- Renovations to kitchens and bathrooms.
- Interpretation of building plans and state building codes.
- Electrical and plumbing experience.

New England Environmental Restoration - Supervisor (1997-1999)

- Operation and repair of high pressure pumps for the spraying of epoxy.
- Trained all new employees.

U.S. Food Service/Rykoff Sexton - Driver (1997)

- Serviced a customer base of 75 clients with deliveries and returns of merchandise.
- Ensured timely and accurate service to all clients.

H.C. Stark Inc. - Manufacturer (1996-1997)

- Manufactured specialty products using an arc furnace and lathes to fulfill customer's requests in a timely manner.

BFI Waste Systems - Driver (1995)

- Provided daily collection of household refuse in suburban Boston.

Sumo Airlines - Operations Supervisor (1987-1995)

- Managed the inbound/outbound air freight between Boston and NYC.
- Supervised a staff of 15 drivers.

United Parcel Service-Operations Supervisor (1983-1987)

- Supervisor of drivers/ responsible for pick-ups and new route assignments (Promoted after 2 years as a driver).

EDUCATION/LICENSES

Stoughton High School (graduated 1980)

Norwich University - Northfield, Vermont (1981)

Commercial Drivers License Class A (1988)

Construction Supervisors course and license (2002)

Sick

Patrick M. Hurley

30 Clay St.
Milton, Ma. 02186
617-898-8883

WORK HISTORY

March 2003
to Present

Continental Shoppe
Dog Groomer

January 2002
to Present

Tunnel Workers Union
Laborer

March 2001

Massport Authority
Supervisor of Security Services
Port of Boston

Responsibilities: Supervise and coordinate activities of personnel engaged in carrying out departmental objectives.
Ensure that security services are operating efficiently and that Port Officers are performing duties in accordance with MPA rules and regulations.
Enforce written and verbal strategies, programs, rules and regulations for all marine terminal security operations

August 1985 to
September 2001

Massport Authority
Port Officer

Responsibilities: Protect Life and property. Prevent crimes against persons and property.
Monitor all persons and vehicles entering and leaving Massport property.
Fill out daily logs.
Make hourly rounds of all Massport property.

August 1982 to
August 1985

Massport Authority
Parking Attendant
Logan Airport

July 1979 to
August 1982

Merrill Lynch
123 High St.
Boston, Mass.
Customer Service

take note?

put back lifting
dog

how much?

18
8 yrs Massport

terminated
prob 9/01

125 hr

week after 9/01

unions - protect the unproductive
- contributed

was charged at Massport - the union
appeared to be

EDUCATION

Class of 1978	South Boston High School
1997	Spanish for Public Safety Personnel
April 2000	Certified Emergency Medical Technician
April 2003	Mount Ida College/Dog Grooming
Jan-March 2003	Clark University Microsoft Word/Excel for Office XP

Outside Activities: Dog care and grooming, Jogging, Skiing, Sailing,
Swimming, Hiking, Softball coach

Kevin M. Crowley

COMPLETED

101 Lexington Road
 Billerica, MA 01821

Home (978) 667-2791
 Cell (978) 375-4056

CONSTRUCTION / OPERATOR / DRIVER / HANDYMAN

EXPERIENCE:

- Hoisting License holder with accident-free record, skilled in operating a wide range of equipment including:
 - Excavator
 - Bobcat
 - Bulldozer
 - Air Compressor
 - Backhoe
 - Roller
 - Front-end Loader
 - Pump Truck
- CDL Class B License holder with accident-free record, skilled in driving a wide range of trucks including.
 - Triaxle & Small Dump Trucks
 - Trailers
 - Sander
 - Flatbeds
 - Utility Truck
 - 5th. Wheel trailers
- Experience in the safe loading and unloading of construction materials.
- Update and maintain accurate records of shipments, routes and related costs.
- Skilled in construction, installation of septic and sewer systems, water mains, grading, paving, excavating foundations, land clearing, general carpentry, contracting for remodeling, patios and decks.
- Additional skills in automotive mechanics, bodywork and vehicle detailing

EMPLOYMENT:

- Handyman, Billerica, MA** 4/2002 to Present
 Provide home improvement, landscaping and vehicle services that include but are not limited to: plumbing, electrical, carpentry, tile, concrete, pavement, build walls, walkways and decks, painting, vehicle detailing, maintenance, mechanics and bodywork
- Soucy Sewers, Tewksbury, MA** 9/2001-4/2002
Truck Driver/Machine Operator
 Responsible for the safe driving of various trucks, including dump trucks and trailers.
 Responsible for the operation of Hyundai 210B Excavator, International Triaxle, John Deer Front-end Loader and Backhoe.
 Responsible for the installation of septic systems and sewer lines.
 Responsible for the safe driving and operation of snow removal/plowing, salt and sanding trucks.
 Responsible for maintenance and repair of all vehicles and equipment.
- DiChiara and Sons, Saugus, MA** 1995-2000
Truck Driver/Machine Operator/Construction Laborer
 Responsible for the safe driving of various trucks, including dump trucks and utility truck.
 Responsible for the operation of JCB Backhoe with extender hoe, 4 in 1 bucket, Hyundai 210B CAT Excavator, Mustang Bobcat and International Sander.
 Responsible for the safe driving and operation of snow removal/plowing, salt and sanding trucks.
 Perform general excavation, paving, water/sewer mains and service, land clearing, home remodeling, concrete and wood patios and decks.
- Archer Corporation, Saugus, MA** 1996-1998
Warehouse/Tool Manager
 Responsible for inventory and maintenance of woodworking tools. Scheduled and delivered tools and equipment to job sites.

EDUCATION:

Melrose High School, Melrose, MA 1985

OBJECTIVE

To obtain a position where I can utilize my skills, training, and work experience.

EMPLOYMENT**A-1 OVERHEAD DOOR, INC.***Installer*

Responsible for repairs and installation of garage doors.

AUGUST 2001 TO FEBRUARY 2002

10 Massachusetts Avenue
Lunenburg, MA 01462

CITY OF FITCHBURG*Maintenance and Janitorial*

Responsible for repairs and cleaning of school property.

AUGUST 2000 TO MAY 2001

718 Main Street
Fitchburg, MA 01420

MONTACHUSETT OPPORTUNITY COUNSEL, INC.*Maintenance*

Drywall, painting, carpentry, welding, roofing, blacktop repair, masonry and snow plowing, plumbing and some electrical.

OCTOBER 1998 TO PRESENT

133 Prichard St., PO Box 986
Fitchburg, MA 01420

SELF-EMPLOYED*Construction*

Drywall, painting, carpentry, welding, roofing, blacktop repair, masonry and snow plowing, plumbing and some electrical.

JULY 1997 TO OCTOBER 1998**CHARTERED BUSES, INC.***Bus Driver*

Responsible for the transportation of children to and from school. Maintained safety and abided by regulations governing the busing of students. Ensured and verified the conditions, maintenance and safety of vehicle before and after use. Required to take appropriate action in disruptive situations using effective communication skills.

OCTOBER 1995 - JUNE 1997

203 Airport Road
Fitchburg, MA 01420

PATON'S LUMBER MILL.*Carpenter/Self-Employed Sub-Contractor**Owner: Al Paton*

Main duties were building grade stakes and furniture and operation of tractor. Dealt with the public and other businesses negotiating sales and provided customer service.

JANUARY 1994 - OCTOBER 1995

733 Mass Avenue
Lunenburg, MA 01462

A & E DISTRIBUTORS*Laborer/Warehouse**Owner: Robert C. Eydenberg*

Main duties were operating a forklift; loading/unloading trucks; pulling Class II trucks in/out of bays; deliveries and warehouse worker. Responsibilities included inventory control and maintaining and using can-crushing machine.

1990 - 1994

89 Commercial Road
Leominster, MA 01453

RAIMO AHTI GENERAL MASONRY*Mason*

Laying bricks; building fireplaces and stone walls; chimney cleaning; drywall; all aspects of masonry.

1985 - 1990

44 Graham Street
Lunenburg, MA 01462

EDUCATION**GED****JULY 31, 1993**SPECIAL TRAINING

- Welding Certificate

- GED License

67 Sycamore Ave
Attleboro, Ma 02703
508-399-8454

James P Fitzgerald

Objective

My objective is to work in a fast-paced environment where my skills and experience will be best utilized.

Experience

2000-2003

Yankee Spirits

Attleboro, Ma

Assistant Manager

- Responsible for the daily operation of an 11 million dollar a year retail liquor store. Included in this was the hiring, training and scheduling of cashiers, stock associates, receiving personnel; customer service; merchandise floor displays; purchasing of stock; shelf stocking; supervision of cash office; overseeing general maintenance of a 40,000 square foot building.

1993-2000

Hallsmith-Sysco Foodservice

Norton, Ma

Truck Driver/Database Clerk

- CDL truck driver: Class "A" with doubles/triples endorsements. Deliver food products to restaurants, hotels and hospitals.
- Database Clerk: Develop and maintain operational databases; trouble shoot and repair existing databases.

1989-1993

Plantation Sysco Foodservice

N. Miami Beach, FL

Truck Driver/Trainer

- CDL truck driver: Class "A" with double/triples endorsements. Deliver food products to restaurants, hotels and hospitals.
- Trained warehouse workers to drive tractor-trailer. Taught CDL class.

1985-1989

Lindenmeyer Paper Company

Canton, Ma

Warehouse Manager

- Responsible for the shipping, receiving, and warehousing of fine paper products.
- Hiring and training of drivers and warehousemen; supervision of 8 truck drivers and 15 warehousemen.

1983-1985

D.H. Roberts Clothing Store

Norwood, Ma

Receiving Manager

- Responsible for all incoming merchandise; pricing, and transferring of product for a two-store operation.
- Oversee the interior construction of a new store.

1973-1983

Filenes

Boston, Ma

Transportation Supervisor/Receiving Manager

- Promoted from dock worker to Receiving Manager in 1976. Responsible for incoming merchandise into the Boston Store.
- All inter-store transfers from the Boston store to the 11 branch stores.
- Fine jewelry marking and distribution.
- Transportation Supervisor: Promoted to this position in 1980. Coordinate the loading and delivery to the 12 locations.

Education

- Notre Dame High School, Cambridge, MA
- Liberty Mutual Decision Driving School, Hopkinton, MA
- Academy of Learning, Attleboro, MA

REDACTED

Track Interviews - BET
Thursday, March 11, 2004

Thursday, March 11		Interview		Time	
Michael Shirkus	781-834-5727	early	refs ✓✓	10:00am	
Marvin Morgan	617-265-9981	hr. early	refs ✓✓ - hr. red	11:00am	
Michael Silva	603-888-3041	early		12:00noon	
				1:00pm	
				2:00pm	

Track Position
Interview at BET
PayRate \$15.53

EXHIBIT

22

9/22/05

M-0014

Review of applicants for the Trackman positions and the decision to interview certain candidates.

How did you select the candidates for interviews?

How many minority candidates were interviewed?

We have been advised that you would not interview certain applicants because of their name and their address - the discussion was that you assumed they were black. What is your response to this?

You were questioned directly by the recruiter - that the reason you would not interview certain applicants was because of their name and address. Your response was that you had more problems with people like that. What did you mean by this statement?

You were then advised that it is illegal to not interview someone because you think they are black. What is your response to this?

When pushed to interview a diversity candidate the recruiter advised Eli it was not about hiring a black person that was not qualified - but if he is I will push really hard. (A.L.) I can't win this conversation so I'm not going to argue (E.M.) What did you mean by this statement?

REDACTED



Elizabeth Bowden

From: Alison Leaton
Sent: Tuesday, March 16, 2004 9:28 AM
To: Elizabeth Bowden; Elizabeth Trowbridge
Subject: RE: Meeting Notes



Liz,
This looks accurate to me. Let me know if you need any additional information.
Alison

-----Original Message-----

From: Elizabeth Bowden
Sent: Monday, March 15, 2004 8:29 PM
To: Elizabeth Bowden; Alison Leaton; Elizabeth Trowbridge
Subject: RE: Meeting Notes

attachment

-----Original Message-----

From: Elizabeth Bowden
Sent: Mon 3/15/2004 8:26 PM
To: Alison Leaton; Elizabeth Bowden
Cc:
Subject: Meeting Notes
All

Please review attached - have I captured the meeting correctly - please review and advise Tuesday

Thanks

Liz

-----Original Message-----

From: Alison Leaton
Sent: Thu 3/11/2004 4:55 PM
To: Elizabeth Bowden
Cc:
Subject: RE: Information
Hi Liz,

The only conversation I had with Eli about whom to interview and not was late last week based on interviewing additional candidates. So, in that conversation I went over additional resumes that I'd screened as yeses and he did not want to interview a person who was, based on name and where he lived being Eli's assumption, that he was black. I pushed very hard and basically told him that we were going to interview him because he was as qualified, if not more so, than other candidates.

He was not happy about it and said he'd not had "good luck" with people "like that" in the past. He said there has been a "greater percentage" of people like that who are problems for him. I did tell him I was not going to "make him hire a minority if they were not qualified, but if they are I will go to the mat". He was not happy about it, but seemed resigned. I'm fairly certain he trusts me enough to just go along if necessary, and I push.

As I said I pushed back and we interviewed him today. He did very well in the interview and I am checking his references. Harold was present (thankfully) in the interview. So if his references check out we will make him an offer.

Please let me know if you need anything else. This is the only conversation I've had with

Eli around this.

Alison

-----Original Message-----

From: Elizabeth Bowden
Sent: Thursday, March 11, 2004 2:14 PM
To: Alison Leaton
Subject: Information

Alison

Please provide me a detailed outline regarding the conversation you had with Eli regarding his choice of who to interview and not and how the candidates interviewed were selected.

I need this by the close of business Friday - by email

Thanks

Liz

Interview Questions to ask Alison Leaton regarding hiring process completed by Eli Mistovich with Trackmen - March 2004.

Purpose of meeting to follow up on e-mail provided by Alison upon request of Elizabeth Bowden March 11, 2004.

What date did you discuss the interviewing of additional candidates?

- Friday March 5th 2004

In person or by telephone?

- In person

How many positions were being filled? - How many people were interview conducted? - how many minority candidates interviewed?

- 5 Trackman - 11 Interviewed - 1 Minority Person - Approximately 50 resumes reviewed - 15 - 20 passed to Eli for consideration.
- Marvin Morgan - Dorchester

Who had all the resumes - did HR have them or did Eli add additional ones not in HR?

HR had all resumes

What specifically did Eli say regarding the addresses and that he assumed the people were black? Did he specifically say "Black"

- Why don't you want to interview this person? (M.M.) (A.L.)
- So your telling me you don't want to interview this person because you think they're black. (A.L.)

Did you ask him what he meant by "people like that" - (this may be answered in above)

- What do you mean? (A.L.)
- No answer given
- It's illegal Eli to do that - not interview people because you think they are black.

Greater percentage of people like that - again - did you confirm that he meant blacks or all diversity? - was there any room for misinterpretation?

- No confirmation
- No room for misinterpretation



M-0002

Interview Questions to ask Alison Leaton regarding hiring process completed by Eli Mistovich with Trackmen –March 2004.

What did Eli say or do differently before, during, or after the interviews of minority candidates?

- No Difference
- When asked what he thought – Eli said "fine"

How many of the 11 interviewed are prospective hires?

- 7 people

If the references of all seven are positive – who would make the final decision?

- The hiring manager.

Other comments or observations.

- When pushed to interview M.M – I advised Eli it was not about hiring a black person that was not qualified – but if he is I will push really hard. (A.L.)
- I can't win this conversation so I'm not going to argue (E.M.)

Date of Meeting: March 15, 2004

Present: Alison Leaton, Elizabeth Bowden, Elizabeth Trowbridge.

M-0003

Elizabeth Bowden

From: Alison Leaton
Sent: Thursday, March 25, 2004 5:22 PM
To: Elizabeth Bowden
Subject: call

Hi Liz,

Just as FYI. Eli Mistovich called me this morning around 9am and asked me if I knew anything about the email you sent to him asking him to contact you about concerns around some of the recent hiring decisions that have been made in the track department. I told him I didn't know anything about it and he needed to speak to you about it.

Alison



M-0007

Elizabeth Bowden

From: Alison Leaton
Sent: Friday, March 26, 2004 5:15 PM
To: Elizabeth Bowden
Subject: follow up

Liz,

Per our earlier conversation:

- The candidate pool that I sent Eli for the most recent round of interviews included 4-5 resumes of people we did not initially choose to interview on March 4th-5th.
- The people we initially chose to interview all had CDLs, but one person who was an internal referral.
- Some of those candidates either chose not to call back, or were no longer interested, or had put either an incorrect phone number, or a fax number on their resume.
- After Eli and I finished interviews on the 5th, it was clear that we needed to interview additional candidates.
- I went back through people I had "red checked" (the 4-5 resumes) with him - in the conference room - and we selected two people with RR or laborers experience and Eli did not want to interview Marvin Morgan.
- It was clear to me that Marvin was very well qualified as he had a CDL and a good work history, and he'd been "red checked" before we chose the initial people to interview on the 4th/5th.
- He was the only person, to my recollection, who was in the new batch of resumes that came in through posting # 2004-004 who had a CDL and did not get placed in the initial interview pile.
- I had to push very hard to get Eli to "agree to disagree" to interview Marvin. It was very clear to me that he did not want to interview him because he thought he was black.

Let me know if you need anything else.

Alison

*Alison Leaton
Recruiter, Human Resources
Massachusetts Bay Commuter Railroad Company*

